

CITY OF MILPITAS
ZONING ORDINANCE
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Section 1 - The Zoning Plan

Section 1 Contents

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1.01 Adoption

There is hereby adopted a zoning or districting plan as a part of the master plan of the City of Milpitas, California. It consists of the establishment of various districts, including therein all the territory within the boundaries of said City, within various of which districts it shall be lawful, and within various of which it shall be unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades or occupations or to make certain uses of lands, and/or within which the height and bulk of buildings shall be limited and/or within which certain open spaces shall be required about buildings and consisting, further, of appropriate regulations to be enforced in such districts, all as set forth in this Chapter. (Ord 38, 3/15/55)

1.02 Intent

The City Council of the City of Milpitas hereby finds and declares that this Chapter is necessary in order to encourage the most appropriate use of land throughout the City; to stabilize and conserve the value of property; to provide adequate light, air and reasonable access; to secure safety from fire and other dangers; to prevent overcrowding of land; to avoid concentration of population; to facilitate the adequate provision for transportation, water, sewerage, schools, parks and other public improvements; and in general to promote the public health, safety, peace, morals, comfort and welfare, all in accordance with a comprehensive Zoning Ordinance and Master Plan. (Ord 38, 3/15/55)

1.03 Citation and Reference

This Chapter shall be known as the "Zoning Ordinance of the City of Milpitas" and may be so cited and pleaded. References to Section numbers herein are to the Sections of this Chapter. (Ord 38, 3/15/55)

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Section 2 - Definitions

[A] [B] [C] [D] [E] [F] [G] [H] [I] [J] [K] [L] [M] [N] [O] [P] [Q] [R] [S]
[T] [U] [V] [W] [X] [Y] [Z]

For the purpose of this Chapter certain terms and words are herewith defined as follows:

2.01 General Definitions

The words "used for" include "designed for" and vice versa; words used in the present tense include the future; words in the singular number include the plural and vice versa; the word "building" includes "structure"; and the word "shall" is mandatory and not directory; the word "lot" includes the word "plot"; the word "City Council", as used herein, shall mean the City Council of the City of Milpitas; the word "Commission" or "Planning Commission" shall mean the Planning Commission of the City of Milpitas, California. Unless otherwise indicated, reference in this Chapter to whole numbers of sections includes all of the decimal-numbered paragraphs listed under such whole number section; i.e., a reference to Section 1.00 includes Subsections 1.01, 1.01-1 where the same are applicable. (Ord 38.19, 2/16/61)

2.02 Accessory Use or Structure

A use or structure subordinate to the principal use of a building on the same lot and serving a purpose customarily incidental to the use of the principal building. (Ord 38.19, 2/16/61) [See Section 54.09]

2.03 Accessory Building or Use

A subordinate building or use, whose purpose is clearly incidental to that of the main building or to the use of the land in which shall not contain living or sleeping quarters or storage for commercial vehicles in excess of 3/4 ton size. (Ord 38.22, 2/1/62) [See Section 54.09]

2.04 Airport

Any area of land or water designed, used , or intended to be used or set aside for the landing and taking off of aircraft. The term "Airport" includes all necessary taxi-ways, aircraft storage and tie- down area, hangers and other necessary buildings and open spaces. (Ord 38, 3/15/55)

2.05 Alley

Any public thoroughfare which affords only a secondary means of access to abutting property. (Ord 38, 3/15/55)

2.06 Alteration: Structural

Any change which would tend to prolong the life of the supporting members of a building or structure, such as bearing walls, columns, beams or girders. (Ord 38, 3/15/55)

2.07 Deleted (Ord 38.603, 7/15/86)

2.08 Apartment House

Same as "Dwelling Multiple" (Ord 38, 3/15/55)

2.09 Apartment, Efficiency

A dwelling unit in a multi-family building consisting of not more than one (1) habitable room, together with kitchen or kitchenette and sanitary facilities. (Ord 38.22, 2/1/62)

2.09.1 Arcade

Any business establishment or premises containing seven (7) or more mechanical or electronic game type machines.
(Ord 38.551, 9/7/82)

2.10 Deleted (Ord 38.603, 7/15/86)

2.11 Automobile Service Station

Any premises used for supplying gasoline and oil at retail, direct to the customer, including minor accessories and services for automobiles, but not including automobile repairs. (Ord 38, 3/15/55)

2.12 Automobile and Trailer Sales Area

An open area, other than a street, used for the display, sale or rental of new or used automobiles or trailers, and where no repair work is done except minor incidental repair of automobiles or trailers to be displayed or sold on the premises.
(Ord 38, 3/15/55)

2.13 Automobile Wrecking

The dismantling or wrecking of used motor vehicles or trailers, or the storage, sale or dumping of dismantled, obsolete or wrecked vehicles or their parts. (Ord 38, 3/15/55)

2.14 Basement

A story, partly or wholly, underground. for purposes of height measurement, a basement shall be counted as a story where more than one-half of its height is above the average level of the adjoining ground.
(Ord 38, 3/15/55)

2.14.1 Bay Window

A window or set of windows jutting out from the wall of a building, rising from the ground and forming an alcove which may or may not add additional floor area or a sitting area within. (Ord 38.667, 1/21/92) [See Section 55.04-2]

2.14.2 Billiard Center

A place for the public to view and participate in cuesports, such as but not limited to billiards, pocket billiards (e.g. pool), snooker, and the various forms of carom billiards. (Ord 38.688, 3/15/94)

2.15 Block

That property so designated on an official map of the City, or part of the City, or

bounded by streets, or by a street or streets, and railroad right-of-way, canal right-of-way, or unsubdivided acreage. (Ord 38, 3/15/55)

2.16 Boarding House

A building, or portion thereof, other than a hotel, where meals and lodging for five (5) or more persons are provided for compensation. (Ord 38, 3/15/55)

2.17 Breezeway

A covered passageway between buildings which does not exceed ten (10) feet in width and which has at least one (1) side open, except for necessary supporting columns. (Ord 38, 3/15/55)

2.18 Building

A structure having a roof supported by columns or walls for the housing or enclosure of persons, animals, or chattels. Where a dwelling is separated by a division wall without openings, each portion of such dwelling shall be deemed a separate building. (Ord 38, 3/15/55)

2.19 Building, Height of

The vertical distance measured from the adjoining curb grade to the highest point of the roof surface, if a flat roof; and to the mean height level between eaves and ridge for a gable, hip or gambrel roof; provided, however, that where buildings are set back from the street line, then the height may be measured from the average elevation of the finished grade along the front of the building. (Ord 38, 3/15/55) [See Section 55.02]

2.20 Building, Main

A building in which is conducted the principal use of the lot on which it is situated. In any "M" district any dwelling shall be deemed to be the main building on the lot on which the same is situated. (Ord 38, 3/15/55)

2.21 Building, Unit Group

Two (2) or more buildings (other than dwellings) grouped upon a lot and held under single ownership such as universities, hospitals, institutions and industrial plants. (Ord 38, 3/15/55)

2.22 Building Official

The officer charged with the administration and enforcement of the Building Code of the City of Milpitas, or his regularly authorized deputy. (Ord 38, 3/15/55)

2.23 Business, Retail

Retail sale of any article, substance, or commodity for profit or livelihood conducted within a building, but not including the sale of lumber or other building materials or the sale of used or second-hand goods or materials of any kind. (Ord 38, 3/15/55)

2.24 Business, Wholesale

The wholesale handling of any article, substance or commodity for profit or livelihood, but not including the handling of lumber or other building material or the open storage or sale of material or commodity, and not including the processing or manufacture of any product or substance. (Ord 38, 3/15/55)

2.25 Camp, Trailer

An area or tract or land used or designed to accommodate two (2) or more automobile or house trailers. (Ord 38, 3/15/55)

2.25.1 Caretakers Residence

Caretakers residence shall mean one (1) accessory structure, used to accommodate a person or persons who takes charge of or cares for the lot on which said dwelling is constructed. Said dwelling may contain one (1) kitchen or cooking facilities, living and sleeping quarters, and shall be limited in floor area to a maximum of twenty (20%) percent of the total floor area of the existing main residence. A garage, not exceeding three hundred sixty (360) square feet may be attached to the structure. (Ord 38.646, 8/1/89) [See Section 4.04-5]

2.26 Cemetery

Land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including columbariums, crematories, mausoleums, and mortuaries when operated in conjunction with and within the boundary of such cemetery.
(Ord 38, 3/15/55)

2.26.1 Commercial Fueling Facility

A fueling facility designed for commercial customers which dispenses gasoline, diesel, or similar vehicle fuels, and which is not open to the general public, has no cash sales and provides no personal services on-site, provided that said facility is located not closer than five hundred (500) feet from any residentially zoned district or any area designated on the General Plan as being "residential" or any mobile home park. (Ord 38.654, 3/20/90)

2.26-1.1 Class A Office Space

A high quality, modern building with large floor plates and amenities that typically attracts rents in the top twenty-five percent (25%) bracket. (Ord. 38.759, 4/2/02)

2.26.2 Condominium

"Condominium" is an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial, or commercial building on such real property, such as an apartment, office, or store. A condominium may include in addition a separate interest in other portions of such real property. Such estate may, with respect to the duration of its enjoyment, be either of the following:

1. An estate of inheritance or perpetual estate.
2. An estate of life.

3. An estate for years, such as leasehold or sub-leasehold. (Ord 38.485, 7/3/79)

2.26.3 Condominium Conversion

"Conversion" is a change in the type of ownership of a parcel or parcels of land, together with the existing attached structures, to that defined for a condominium project or a community apartment project regardless of the present or prior use of such land and structures and whether substantial improvements have been made or are to be made to such structures.

(Ord 38.485, 7/3/79) [See Section 7.04-11]

2.26.4 Commercial Athletic Facility

A building or site equipped for physical training or athletic type games and sports, such as but not limited to, health spas, tennis, gymnasiums, handball courts, racquetball courts; also including ancillary uses when incidental to the primary use, such as but not limited to, steam baths, weight training, aerobic classes, massage, saunas, and the retailing of athletic supplies to be used in the facility.

(Ord. 38.694, 10/4/94)

2.26-5 Commercial Service

Establishments which provide non-medical services of a retail character to patrons which may involve the sale of goods associated with the service being provided. These establishments include business that provide both personal and businesses services, but not industrial services. Examples of establishments covered by this designation include barber and beauty shops, shoe repair shops, self-service laundries, tuxedo rental shops, dry-cleaners, tailors, interior decorators, accountants, architects, photocopy shops, and mail box rentals. Examples of establishments not covered by this designation include dry cleaning plants, metal shops, machine shops, welding shops, cabinetry shops, and any customer fabrication or machinery repair shops. (Ord. 38.759, 4/2/02)

2.27 Court

An open unoccupied space, other than a yard, on the same lot with a building or buildings, and bounded on two (2) or more sides by a building, or buildings, including the open space in a dwelling group providing access to the units thereof. (Ord 38, 3/15/55)

2.28 Court Apartment

One, two or three multiple dwellings arranged around two (2) or three (3) sides of a court which opens onto a street, or a place approved by the Commission. (Ord 38, 3/15/55)

2.29 Curb Grade

The elevation of the established curb in front of the building measured at the center of such front. Where no curb grade has been established, the City Engineer shall establish such curb grade or its equivalent for the purpose of this Chapter.

(Ord 38, 3/15/55)

2.29.1 Day Care Center

Any child care facility other than a family day care home, and include infant centers, preschools, and extended day care facilities. (Ord. 38.702, 8/15/95)

2.30 District

A portion of the City within which certain uses of land and buildings are permitted or prohibited and within which certain yards and other open spaces are required and certain height limits are established for buildings, all as set forth and specified in this Chapter. (Ord 38, 3/15/55)

2.31 Dwelling

A building or portion thereof designed exclusively for residential occupancy, including single- family, two-family, and multiple-family dwellings, but not including hotels, boarding and lodging houses. (Ord 38, 3/15/55)

2.32 Dwelling Unit

Two (2) or more rooms in a dwelling designed for occupancy by one (1) family for living purposes and having only one (1) kitchen. (Ord 38, 3/15/55)

2.33 Dwelling, Single-Family

A detached building designed exclusively for occupancy by one (1) family. (Ord 38, 3/15/55)

2.34 Dwelling, Two-Family

A building designed exclusively for occupancy by two (2) families living independently of each other. (Ord 38, 3/15/55)

2.35 Dwelling, Multiple-Family

A building or portion thereof, designed for occupancy by three (3) or more families living independently of each other. (Ord 38, 3/15/55)

2.36 Dwelling, Group

One (1) or more dwellings, other than a tourist court, arranged around two (2) or three (3) sides of a court, which opens onto a street, or a place approved by the commission, including single-family, two-family or multiple-family dwellings and court apartments. (Ord 38, 3/15/55) [See Section 7.04-2]

2.36-1 EcoPass

A program offered by the Valley Transportation Agency (VTA) in which employers or property owners purchase annual EcoPass stickers that allow their employees, tenants or residents to ride all VTA bus and light rail vehicles at no cost. (Ord. 38.759, 4/2/02)

2.37 Educational Institution

A college or university giving general academic instruction equivalent to the standards prescribed by the State Board of Education. (Ord 38, 3/15/55)

2.37.1 Erosion

Erosion is the wear and removal of the material in the earth's crust from one site and the deposition at another. (Ord 38.355, 9/16/75)

2.37.2 Expansive Soils

Expansive soils are earth materials which greatly increase in volume when they absorb water and shrink when they dry. (Ord 38.355, 9/16/75)

2.38 Family

An individual, or two (2) or more persons related by blood or marriage, or a group of not more than five (5) persons (excluding servants) not related by blood or marriage, living together as a single housekeeping unit in a dwelling unit. (Ord 38, 3/15/55)

2.38.1 Family Day-Care Homes

A home in which care, protection, and supervision of twelve (12) or fewer children is regularly provided for periods of less than twenty-four (24) hours per day, while the parents or guardians are away, and includes the following:

a) "Large Family Day Care Home" which means a home in which family day care is provided to seven (7) to twelve (12) children, including children under the age of ten (10) who reside at the home. b) "Small Family Day Care Home" which means a home in which family day care is provided to six (6) or fewer children, including children under the age of ten (10) who reside at the home.

(Ord. 38.702, 8/15/95, amending Ord 38.339, 2/19/74)

2.38.2 Floor Area Ratio

Floor Area Ratio (FAR) is defined for non-residential Zoning Districts as the maximum permitted ratio of gross floor area to site area and is calculated as follows:

$$\text{FAR} = \frac{\text{Total of Gross Floor Area for All Structures on Site}}{\text{Site Area}}$$

Increases above the maximum permitted FAR for any district can be allowed with approval of a Use Permit by the Planning Commission. This can be considered when the applicant can demonstrate that the proposed development will (1) generate low peak-hour traffic; (2) will not create a dominating visual prominence. Examples of such uses include wholesaling, distribution and hospitals. In each case where an increase in the maximum permitted FAR has been allowed, all other development standards for the site must be met.

2.39 Frontage

All the property fronting on one (1) side of a street between intersecting or intercepting streets, or between a street and a right-of-way, waterway, end of dead-end street, or city boundary, measured along the street line. An intercepting street shall determine only the boundary of the frontage on the side of the street which it intercepts. (Ord 38, 3/15/55)

2.39.1 Game Machine, Mechanical or Electronic

Mechanical or electronic game machine shall mean any machine, apparatus, contrivance, appliance, or device which may be operated or played upon the placing or depositing therein of any coin, check, slug, ball, token, or any other article or device, or by paying therefore either in advance or after use, involving in its use either skill or chance, including, but not limited to tape machine, card machine, pinball machine, bowling game machine, shuffleboard machine, marble game machine, horse racing machine, basketball game machine, baseball game machine, football game machine, electronic video game or any other similar machine or device, exclusive of food, beverage and tobacco vending machine. (Ord 38.551, 9/7/82)

2.40 Garage, Private

A detached accessory building or portion of a main building for the parking or temporary storage of automobiles of the occupants of the premises. (Ord 38, 3/15/55)

2.41 Garage, Public

A building, other than a private garage, used for the care, repair, or equipment of automobiles, or where such vehicles are parked or stored for remuneration, hire or sale. (Ord 38, 3/15/55)

2.41.1 Ground Rupture

Ground rupture is the physical cracking of the earth's surface along fault traces during an earthquake due to movement in the earth's crust on opposing sides of the fault trace. (Ord 38.355, 9/16/75)

2.41-1.1 Gross acreage

Area of a site calculated to the centerline of bounding streets and other public rights-of-way. (Ord. 38.759, 4/2/02)

2.41.2 Guest House Accessory Building

Guest House Accessory Building shall mean one (1) accessory structure, used for the accommodation of quests. Said quest house shall not contain any kitchen or cooking facilities but may contain one (1) bedroom, one (1) living area and one (1) bathroom, and shall be limited in floor area to a maximum of twenty (20%) percent of the total floor area of the main residence. (Ord 38.646,) [See Section 4.05.1]

2.42 Home Occupation

See XI-10-54.08

2.43 Hotel, Motel

A building or group of buildings containing individual sleeping or living units, provided with or without individual kitchen facilities, designed and intended for use by paying automobile tourists or paying temporary guests. The term also includes ancillary uses when incidental to the primary use, including but not limited to, manager's living unit and accessory guest facilities such as swimming

pools, tennis courts, indoor athletic facilities, incidental merchandise sales, meeting rooms, maid service and laundry facilities. (Ord 38.603, 7/15/86, Ord. 38.708, 08/06/96)

2.44 Junk Yard

The use of more than one hundred (100) square feet of the area of any lot for the storage of junk, including scrap materials and metals, or wrecked vehicles and machinery, whether or not sale of such junk is made or proposed. (Ord 38, 3/15/55)

2.45 Kennel

Any lot or premises on which four (4) or more dogs, more than four (4) months of age are kept. (Ord 38, 3/15/55)

2.45-1 Lateral Spreading

Lateral spreading is the movement of loose soils over low-angle slopes ((less than five (5) percent) into open areas during an earthquake. (Ord. 38.355, 9/16/75)

2.45-2 Live Work Unit

A dwelling unit with a separate living space attached to a work space within the same unit. The work space and the living space must be occupied by the same tenant. (Ord. 38.759, 4/2/02)

2.46 Loading Area

An open area, other than a street or alley, used for the loading or unloading of vehicles. (Ord 38, 3/15/55)

2.47 Loading Space

An off-street space or berth on the same lot with a building, or contiguous to a group of buildings, for the temporary parking of a commercial vehicle while loading and unloading merchandise or materials, and which abuts upon a street or other appropriate means of access. (Ord 38, 3/15/55)

2.48 Lodging House

A building, or portion thereof, other than a hotel, where lodging for five (5) or more persons is provided for compensation, including rooming house. (Ord 38, 3/15/55)

2.49 Lot

Land occupied or to be occupied by a building, or unit group of buildings, and accessory buildings, together with such yards and lot area as are required by this Chapter and having its principal frontage upon a street or a place approved by the Commission. (Ord 38, 3/15/55)

2.50 Lot Lines

The lines bounding a lot as defined herein. (Ord 38, 3/15/55)

2.51 Lot Width

The horizontal distance between the side lot lines, measured at right angles to the lot depth at a point midway between the front and rear lot lines. (Ord 38, 3/15/55)

2.52 Lot Depth

The horizontal distance between the front and rear lot lines, measured along the median between the two side lot lines. (Ord 38, 3/15/55)

2.53 Lot Area

The total horizontal area within the lot lines of a lot. (Ord 38, 3/15/55)

2.54 Lot, Corner

A lot, or portion thereof, not greater than seventy-five (75) feet in width and situated at the intersection of two (2) or more streets. (Ord 38, 3/15/55)

2.55 Lot, Reversed Corner

A corner lot the street line of which is substantially a continuation of the front line of the lot to its rear. (Ord 38, 3/15/55)

2.56 Lot, Interior

A lot other than a corner lot. (Ord 38, 3/15/55)

2.57 Lot, Through

A lot having frontage on two (2) paralleled or approximately paralleled streets. (Ord 38, 3/15/55)

2.57.1 Lurch Cracking

Lurch cracking is the development, usually temporary, of all types and sizes of cracks and fissures in the ground during an earthquake. (Ord 38.355, 9/16/75)

2.57.2 Massage Establishment

An establishment having a fixed place of business, including but not limited to any establishment in which massage, acupuncture or similar services are made available, (except those which are exempt by Government Code § 51033 as amended from time to time) in which the teaching, practice, or the giving of massage, acupuncture or similar procedure is conducted. (Ord. 38.694, 10/4/94)

2.58 Manufacture

Preparation, making treatment or processing of articles as merchandise. (Ord 38, 3/15/55)

2.58.1 Mobile Home

A transportable structure designed to be used as a dwelling unit when connected to required utilities. (Ord 38.227, 6/20/72)

2.58.2 Mobile Home Lot

A portion of a mobile home park designed to be used as a dwelling unit when connected to required utilities. (Ord 38.227, 6/20/72)

2.58.3 Mobile Home Park

Any areas or tract of land where mobile home lots are rented or leased or held out for rent or lease to accommodate mobile home used for human habitation. (Ord 38.227, 6/20/72)

2.58.3.1 Deleted (Ord. 38.708, 08/06/96)

2.58.4 Mobile Home Stand

The area on which the mobile home is placed when it is stationed on the lot, including the land lying under the mobile home. (Ord 38.227, 6/20/72)

2.58.4.1 Mixed Use Development

A development that consists of vertical or horizontal combination of residential and commercial uses within a single building or site. (Ord. 38.759, 4/2/02)

2.58.5 Mobile Home Accessory Building or Structure

Any awning, portable, demountable or permanent cabana, ramada, storage cabinet, carport, fence, windbreak or porch established for the use of the occupant of the mobile home. (Ord 38.227, 6/20/72)

2.58.5.1 Mobile Recycling Unit

An automobile, truck, trailer or van, licensed by the Department of Motor Vehicles or bins, boxes or containers transported by a truck, van or trailer, and used for the collection or recyclable materials. (Ord 38.629, 10/27/87)

2.58.6 Natural Land Slope

The average slope of the lot in percent, determined by observation on simple slopes, or more precisely by the formula:

$$S = \frac{100 \ I \ L}{A}$$

Where "I" is the contour interval in feet;

"L" is the combined length of the contour lines in scale feet; and

"A" is the net area of the lot in square feet. (Ord 38.355, 9/16/75)

2.59 Non-Conforming Building

A building or structure or portion thereof lawfully existing at the time this Chapter became effective, which was designed, erected or structurally altered, for a use that does not conform to the use regulations of the district in which it is located. (Ord 38, 3/15/55)

2.60 Non-Conforming Use

A use which lawfully occupied a building or land at the time this Chapter became

effective and which does not conform with the use regulations of the district in which it is located. (Ord 38, 3/15/55)

2.61 Open-Air Business

Drive-in business where persons are served in automobiles. (Ord 38, 3/15/55)

2.62 Occupation

A principal business, profession or vocation in which one is regularly and habitually engaged for the purpose of compensation for a livelihood. (Ord 38.39, 8/15/63)

2.63 Parking Area, Private

An open area, other than a street or alley, used for the parking of the automobiles of occupants of a building. (Ord 38, 3/15/55)

2.64 Parking Area, Public

An open area, other than a private parking area, street or alley, used for the parking of automobiles and available for public or quasi-public use. (Ord 38, 3/15/55)

2.65 Parking Space, Automobile

Space within a building or a private or public parking area for the parking of one (1) automobile. (Ord 38, 3/15/55)

2.65.1 Patio Cover

A patio cover is a one-story structure, not exceeding twelve (12) feet in height and open on one (1) or more sides (provided, however, that the open sides may be closed with insect screening or plastic but not in any manner or with any material that would obstruct the free passage of light or air) used for recreational, outdoor living purposes only and not as carports, storage rooms or habitable rooms. (Ord 38.342, 7/2/74) [See Sections 54.09 & 55.04-5]

2.66 Person

A natural person, his or her heirs, executors, administrators or assigns, and also including a firm, partnership or corporation, its or their successors or assigns, or the agent of any of the aforesaid. (Ord 38, 3/15/55)

2.66-1 Private Recreational Areas

Any usable open space or recreational facility available for use by all of the site's residents. . (Ord. 38.759, 4/2/02)

2.67 Place

An open, unoccupied space, other than a street or alley, permanently reserved as the principal means of access to abutting property. (Ord 38, 3/15/55)

2.67.1 Recyclable Material

Recyclable material is reusable material including but not limited to metals, glass, plastic and paper, which are intended for reuse, remanufacture, or reconstitution for the purpose of using the altered form. Recyclable material does not include refuse or hazardous materials. Recyclable material may include used motor oil collected and transported in accordance with the California Health and Safety Code.

(Ord 38.629, 10/27/87)

2.67.2 Recyclable Processing Facility

A recyclable processing facility is a building or space used for the collection and processing of recyclable materials. Processing means the preparation of material for shipment by such means as bailing, briquette, compacting, flattening, grinding, crushing, sorting, shredding, cleaning, and remanufacturing. (Ord 38.629, 10/27/87)

2.67.2.1 Research and Development (R&D) Uses

Research and Development facilities include one or more buildings which feature a combination of offices, manufacturing, assembly, warehousing, distribution, laboratories and clean rooms, and ancillary uses such as cafeterias and employee fitness facilities. (Ord. 38.708, 08/06/96)

2.67.3 Reverse Vending Machine(s)

An automated mechanical device which accepts at least one or more types of empty beverage containers including, but not limited to aluminum cans, glass and plastic containers, and issues a cash refund or a redeemable credit slip. A reverse vending machine sorts, and processes containers mechanically provided that the entire process is enclosed within the machine. In order to accept and temporarily store all three container types in a proportion commensurate with their relative redemption rates, and to meet the requirements of certification as a recycling facility, multiple grouping of reverse vending machines may be necessary. (Ord 38.629, 10/27/87) [See Section 57.02-15]

2.68 Rooming House

Same as "Lodging House". (Ord 38, 3/15/55)

2.69 School: Elementary, Middle or High

An institution which offers instruction in the several branches of learning and study required to be taught in the public schools by the Education Code of the State of California . (Ord 38, 3/15/55, Ord. 38.710, 08/06/96)

2.69.1 Slope

Same as "Natural Land Slope". (Ord 38.355,)

2.69.2 Slope Stability

Slope stability is the relative ability of slopes to retain their frictional resistance to downslope movement. (Ord 38.355,)

2.70 Stable, Private

A detached accessory building for the keeping of horses owned by the occupants of the premises and not kept for remuneration, hire or sale. (Ord 38, 3/15/55)

2.71 Stable, Public

A stable other than a private stable. (Ord 38, 3/15/55)

2.72 Story

That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between such floor and ceiling next above it. (Ord 38, 3/15/55)

2.73 Story, Half

A story under a gable, hip or gambrel roof, the wall plates of which on at least two (2) opposite exterior walls are not more than four (4) feet above the floor of such story. (Ord 38, 3/15/55)

2.74 Street

A permanently reserved thoroughfare which affords principal means of access to abutting property. (Ord 38, 3/15/55)

2.75 Structure

Anything constructed or erected, which requires location on the ground or is attached to something having a location on the ground. (Ord 38, 3/15/55)

2.76 Townhouses

Dwelling units that are attached at their sides in groups of three or more and are sited on individual lots with vehicular access from driveways. Private rear yards or patios and common open space may be part of a townhouse development. (Ord. 38.759, 4/2/02)

2.77 Trailer, Automobile

A vehicle without motive power designed to be drawn by a motor vehicle and to be used for human habitation or for carrying persons and property, including a trailer coach or house trailer. (Ord 38, 3/15/55)

2.77-1 Usable Open Space

Any open space, the smallest dimension of which is at least six (6) feet and which is not used as storage or for movement of motor vehicles. Yards abutting a public street, which are not adequately screened for privacy, in the opinion of the Planning Commission, shall not qualify as usable open space. (Ord. 38.759, 4/2/02)

2.78 Use

The purpose for which land or a building is arranged, designed or intended, or for which either land or building is or may be occupied or maintained. (Ord 38, 3/15/55)

2.78-1 Vibration Damage

Vibration damage is partial or complete destruction to structures due to ground vibration caused by the transmission of earthquake vibrations from the ground into the structure. (Ord 38.355, 9/16/75)

2.78-2 Vehicle Oriented Window Service Facility

Vehicle Oriented Window Service Facility shall mean any component or part of a building or structure which attracts or invites persons in motor vehicles to drive their vehicles upon the premises, and which is used to conduct business or used for the purpose of selling merchandise from the inside of said building to the occupants of motor vehicles.

(Ord 38.396, 9/20/77) [See Section 57.01-1.13]

2.78-3 Video Sales and Rental Store

Video Sales and Rental store shall mean any place of business which includes the sale or rental of pre-recorded video tapes, laser discs, compact discs, or any other medium which projects pictures on a screen. (Ord. 38.697; 12/20/94)

2.79 Yard

An open space, other than a court, on a lot, unoccupied and unobstructed from the ground upward, except as otherwise provided in this Chapter. (Ord 38, 3/15/55)

2.80 Yard, Front

A yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and a line parallel thereto on the lot. (Ord 38, 3/15/55)

2.81 Yard, Rear

A yard extending across the full width of the lot between the most rear main building and the rear lot line; the depth of the required rear yard shall be measured horizontally from the nearest point of the rear lot line toward the nearest part of a main building. (Ord 38, 3/15/55)

2.82 Yard, Side

A yard between the main building and the side lot line extending from the front yard, or front lot line where no front yard is required, to the rear yard; the width of the required side yard shall be measured horizontally from the nearest point of the side lot line toward the nearest part of the main building. (Ord 38, 3/15/55)

UPDATE LOG:

(Ord 38.19, 2/16/61 Sec. 2.01 Added)

(Ord 38.22, 2/1/62 Sec 2.03, 2.09 Added)

(Ord 38.39, 8/15/63 Sec 2.62 Added)

(Ord 38.227, 6/20/72 Sec 2.58.1, 2.58.2, 2.58.3, 2.58.4, 2.58.5 Added)

(Ord 38.339, 2/19/74, Sec 2.38.1 Added)

(Ord 38.342, 7/2/74 Sec 2.65.1 Added)

(Ord 38.396, 9/20/77 Sec 2.78.2 Added)
(Ord 38.355, 9/16/75 Sec 2.37.1,, 2.37.2, 2.41.1, 2.57.1, 2.58.6, 2.69.1, 2.69.2, 2.78.1 Added)
(Ord 38.485, 7/3/79 Sec 2.26.1, 2.26.2 Added)
(Ord 38.551, 9/7/82 Sec 2.09.1, 2.39.1 Added)
(Ord 38.603, 7/15/86 Sec 2.07, 2.10 Deleted, Sec 2.43 Added)
(Ord 38.629, 10/27/87 Sec 2.58.5.1, 2.67.1, 2.67.2, 2.67.3, Added)
(Ord 38.646, 8/1/89 Sec 2.25.1, 2.41.2 Added)
(Ord 38.654, 3/20/90 Sec 2.26.1 Added)
(Ord 38.667, 1/21/92 Sec 2.14.1 Added)
(Ord 38.688, 3/15/94 - Sec. 2.14-2 Added)
6/6/94 - Section numbers 2.26-2 and 2.26-3 were corrected.
(Ord. 38.694, 10/4/94 Sec 2.26-4 & 2.57-2 were added)
(Ord. 38.697 12/20/94 Sec 2.78-3 was added)
(Ord. 38.702, 8-15-95 Sec 2.29-1 added; Sec 2.38.1 amended)
(Ord. 38.708, 8/6/96 Sec 2.67.2.1 added, Sec 2.43 amended, Sec 2.58.3.1 deleted)
(Ord. 38.710, 8/6/96 Sec 2.69 amended)
Ord. 38.713, 12/3/96: Sec. 2.38.2 added)
(Ord. 38.717, 5/20/97: Sec. 2.09.2 added)
(Ord. 38.759, 4/2/02: Sec 2.26-1.1, 2.26-5, 2.36-1, 2.41-1.1, 2.45-2, 2.58-4, 2.66-1, 2.76, 2.77-1 added)

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Section 3 - Zoning Districts

Section 3 Contents

- 3.01 Districts
- 3.02 Combining Regulations
- 3.03 Zoning Map
- 3.04 Letter Designation Includes All Aspects Of The Zone
- 3.05 Most Restrictive And Least Restrictive Zones
- 3.06 Reference To General Provisions And Exceptions

3.01 Districts

In order to carry out the purpose and provisions of this Chapter, the City is hereby divided into districts known as:

| | <u>Full Name</u> | | <u>Short Name</u> |
|-------|---|-------|-------------------|
| "R1" | Single Family District | "R1" | District |
| "R2" | One and Two Family District | "R2" | District |
| "R3" | Multiple Family District | "R3" | District |
| "R4" | Multiple Family Very High Density District | "R4" | District |
| "AR" | Agricultural Residence | "AR" | District |
| "CO" | Administrative & Professional Office District | "CO" | District |
| "C1" | Neighborhood Commercial District | "C1" | District |
| "C2" | General Commercial District | "C2" | District |
| "HS" | Highway Service District | "HS" | District |
| "TC" | Town Center District | "TC" | District |
| "M1" | Light Industrial District | "M1" | District |
| "M2" | Heavy Industrial District | "M2" | District |
| "MP" | Industrial Park District | "MP" | District |
| "MXD" | Mixed Use District | "MXD" | District |
| "A" | Agricultural District | "A" | District |
| "POS" | Park and Open Space District | "POS" | District |

(Ord 38.759, 4/2/02)

3.02 Combining Regulations

In addition to the foregoing districts certain combining regulations are established as set forth in this Chapter, said combining regulations being as follows, to wit:

| | <u>Full Name</u> | | <u>Short Name</u> |
|-------|---|-------|-------------------|
| "DB" | Density Bonus Combining District | "DB" | District |
| "S" | Special Zoning Area | "S" | District |
| "MHP" | Mobile Home Park Combining District | "MHP" | District |
| "TOD" | Transit Oriented Development Combining District | "TOD" | District |
| "OO" | Gateway Office Overlay Combining District | "OO" | District |
| "H" | Hillside Combining District | "H" | District |

(Ord 38.759, 4/2/02)

3.03 Zoning Map

The districts aforesaid and the boundaries of such districts are shown upon the map attached hereto and made a part of this Chapter, being designated as the "Zoning Map of the City of Milpitas", together with "Sectional District Map of the City of Milpitas" supplementary thereto, consisting of an "Index Map" to sectional district maps numbered consecutively from 1 to 4, inclusive, and said map and all notations, references and other information shown thereon shall be as much a

part of this Chapter as if the matter and information set forth by said map were fully described herein. (Ord 38, 3/15/55)

3.04 Letter Designation Includes All Aspects Of The Zone

Whenever the terms "R" District, "C" District or "M" District are used herein, they shall be deemed to refer to all districts containing the same letter in their names; for example, the term "C" District shall include the "C1" and "C2" District. (Ord 38, 3/15/55)

3.05 Most Restrictive And Least Restrictive Zones

The "R1" District is the most restrictive and the "M2" District is the least restrictive. (Ord 38, 3/15/55)

3.06 Reference To General Provisions And Exceptions

For "General Provisions" and "Exceptions" pertaining to the following district regulations, see Section 54 and 55 inclusive. (Ord 38, 3/15/55)

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Section 4 - "R1" Single Family Residence District

Section 4 Contents

- 4.01 Purpose
- 4.02 Principal Permitted Uses
- 4.03 Accessory Uses
- 4.04 Conditional Uses
- 4.05 Height Requirements
- 4.06 Area, Lot, Width and Yard Requirements
- 4.07 Automobile Parking Restrictions
- 4.08 Required Improvements
- 4.09 Corner Lots
- 4.10 Areas for Collecting and Loading Recyclable Materials

Section 4 "R1" Single Family Residence District

4.01 Purpose

To stabilize and protect the residential characteristics of the District and to promote and encourage a suitable environment for family life. The "R1" District is intended for the suburban family home and the services appurtenant thereto. (Ord 38.19, 1/17/61)

4.02 Principal Permitted Uses

The following are the principal permitted uses in an "R1" District:

- 4.02-1 Single-family dwellings.
- 4.02-2 Planned Unit Developments subject to provisions of Subsection 54.07.
- 4.02-3 Agriculture, except the raising of animals or fowl for commercial purposes, or the sale of any products at retail on the premises. (Ord 38.19, 1/17/61)
- 4.02-4 Mobile homes subject to provisions of Subsection 54.14. (Ord 38.541, 4/20/82)

4.03 Accessory Uses

The following are the accessory uses permitted in an "R1" District:

- 4.03-1 Rooming and boarding of not more than two (2) persons.
- 4.03-2 Home occupations and professional offices in home, as provided for in Subsection 54.08 (Ord 38.19, 1/17/61)
- 4.03-3 A State authorized, certified or licensed family care home, foster home, or group home serving six (6) or fewer mentally disordered or otherwise handicapped persons or dependent or neglected children provided such home furnishes such care on a 24 hour a day basis. (Ord 38.339, 2/19/74)
- 4.03-4 Other accessory uses and accessory buildings customarily appurtenant to a permitted use, as provided for in Subsection 54.09.
- 4.03-5 Small family day care home (Ord. 38.702, 8-15-95, amending Ord 38.339, 2/19/74)

4.04 Conditional Uses

The following uses may also be permitted if their location is first approved by the Commission, as provided for in Subsection 57: (Ord 38.19, 1/17/61)

- 4.04-1 School (elementary and high) and park, playground or community center, owned and operated by a governmental agency or non-prohibit community organization;

Permanent church buildings (except rescue mission and temporary revival);

Public service structures, not including corporation yards, storage or repair yards and warehouses; and

Golf course (except driving tee or range, miniature course and similar uses operated for commercial purposes).

- 4.04-2 Off street public parking areas.
- 4.04-3 Temporary tract offices and tract signs with the exception that no tract sign shall be permitted within six hundred (600) feet of a Santa Clara County Expressway.
(Ord 38.207, 11/17/70)
- 4.04-4 Second-family units.
A second family unit may be allowed on a single-family zoned lot subject to the following criteria:
- 4.1 The second family unit is not intended for sale and may be rented.
 - 4.2 The lot is zoned "R1", is a minimum of 6,000 square feet in size, and is located on a corner.
 - 4.3 The lot contains an existing single-family detached unit.
 - 4.4 The second unit is attached to the existing residence and is located within the living area of the existing dwelling.
 - 4.5 Whenever an increase in floor area is involved, it shall not exceed ten (10%) percent of the existing area.
 - 4.6 The second unit cannot be larger than four hundred seventy-five (475) square feet in size.
 - 4.7 The second unit cannot have more than one (1) bedroom.
 - 4.8 Any construction shall conform to height setback, lot coverage, architectural review, site plan review, fees, charges and other zoning requirements generally applicable to residential construction in the zone in which the property is located.
 - 4.9 Local building code requirements which apply to additions to existing single- family dwellings, as appropriate.
 - 4.10 One (1) of the two (2) units shall be occupied by the owner of the property.

As used in this section, "living area" means the interior inhabitable area of a dwelling unit including basements and attics and shall not include a garage or any accessory structure.

A second residential unit which conforms to the requirements of this section shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use which is consistent with the existing general plan and zoning designations for the lot. The second units shall not be considered in the application of any local ordinance, policy, or program to limit residential growth. (Ord 38.605, 6/3/86)

4.04-5 Second Dwellings on a Single Parcel

One second dwelling unit on a single parcel may be allowed for either one (1) guest house or one (1) caretakers residence, and shall be subject to the following criteria. (Ord 38.646,)

5.1 Guest House shall be on a parcel two (2) acres or larger, located on the rear half of the lot, shall not cover more than thirty (30%) percent of the required rear yard, shall conform to the side yard setback requirements of the principal building, and cannot exceed seventeen (17) feet in height measured from a warped plane parallel to the finished grade. (Ord 38.646,)
(Also refer to definition section 2.41.2 for other criteria)

5.2 Caretaker Residence shall be on a parcel of five (5) acres or larger, located on the rear half of the lot, shall not cover more than thirty (30%) percent of the required rear yard, shall conform to the side yard setback requirements of the principal building, and cannot exceed seventeen (17) feet in height measured from a warped plane parallel to the finished grade. (Ord 38.646,)
(Also refer to definition section 2.25.1 for other criteria)

4.04-6 Large family day care and day care center (Ord. 38.702, 8-15-95)

4.05 Height Requirements

No principal building shall exceed thirty (30) feet in height, and no accessory building, other than guest houses or caretakers residences, shall exceed fifteen (15) feet in height. Guest house accessory building and caretaker residence shall not exceed seventeen (17) feet in height. (Ord 38.646,)

4.06 Area, Lot, Width and Yard Requirements

The following minimum requirements shall be observed, except where increased for conditional uses. The minimum requirements shall be one of the following for the district classification as designated on the zoning map. (Ord 38.19, 1/17/61)

4.06-1 Lot Area

| | | |
|-----------------------|---------------------------|------------------|
| R1-10 | Ten thousand | (10,000) Sq. Ft. |
| R1-8 | Eight thousand | (8,000) Sq. Ft. |
| R1-6 | Six thousand | (6,000) Sq. Ft. |
| R1-5 | Five thousand | (5,000) Sq. Ft. |
| R1-4 | Four thousand | (4,000) Sq. Ft. |
| R1-3 | Three thousand | (3,000) Sq. Ft. |
| R1-2.5 | Two thousand five hundred | (2,500) Sq. Ft. |
| (Ord 38.526, 1/20/81) | | |

4.06-2 Lot Width

2.1 Lot Width - Slope less than sixteen (16%) percent.

| | | |
|-----------------------|------------|-----------|
| R1-10 | Eighty | (80) Feet |
| R1-8 | Seventy | (70) Feet |
| R1-6 | Fifty-five | (55) Feet |
| R1-5 | Fifty | (50) Feet |
| R1-4 | Forty | (40) Feet |
| R1-3 | Thirty | (30) Feet |
| R1-2.5 | Thirty | (30) Feet |
| (Ord 38.526, 1/20/81) | | |

2.2 Lot Width - Slope equal to or greater than sixteen (16%) percent, but less than twenty-six (26%) percent.

R1-10 Two hundred (200) Feet (Ord 38.339, 9/20/77)

2.3 Lot Width - Slope equal to or greater than twenty-six (26%) percent.

R1-10 Three hundred (300) Feet (Ord 38.339, 9/20/77)

4.06-3 Front Yard

3.1 Front Yard - Slope less than sixteen (16%) percent.

| | | |
|-------|-------------|-----------|
| R1-10 | Twenty-five | (25) Feet |
| R1-8 | Twenty-five | (25) Feet |
| R1-6 | Twenty | (20) Feet |
| R1-5 | Twenty | (20) Feet |

- R1-4 Twenty (20) Feet; if access is provided to side of garage via curved driveway, fifteen (15) feet
 - R1-3 Twenty (20) Feet; if access is provided to side of garage via curved driveway, fifteen (15) feet
 - R1-2.5 Twenty (20) Feet; if access is provided to side of garage via curved driveway, fifteen (15) feet
- (Ord 38.526, 1/20/81)

3.2 Front Yard - Slope equal to or greater than sixteen (16%) percent but less than twenty-six (26%) percent.

R1-10 Forty (40) Feet (Ord 38.339, 9/20/77)

3.3 Front Yard - Slope equal to or greater than twenty-six (26%) percent.

R1-10 Forty (40) Feet (Ord 38.339, 9/20/77)

4.06-4 Side Yard

4.1 Side Yard - Slope less than sixteen (16%) percent.

R1-10 One side eight (8) feet; total both sides twenty (20) feet.

R1-8 One side seven (7) feet; total both sides seventeen (17) feet.

R1-6 Adjacent to the garage a minimum of six (6) feet and the total of both side yards thirteen (13) feet.

R1-5 Adjacent to the garage a minimum of six (6) feet and the total of both side yards ten (10) feet.

R1-4 One side six (6) feet.

R1-3 One side five (5) feet.

R1-2.5 One side five (5) feet.

(Ord 38.526, 1/20/81)

4.2 Side Yard - Slope equal to or greater than sixteen (16%) percent but less than twenty-six (26%) percent.

R1-10 One side twenty (20) feet. Total both sides forty-five (45) feet. (Ord 38.339, 9/20/77)

4.3 Side Yard - Slope equal to or greater than twenty-six (26%) percent.

R1-10 Forty (40) Feet. (Ord 38.339, 9/20/77)

4.06-5 Rear Yard

5.1 Rear Yard - Slope less than sixteen (16%) percent.

| | | |
|-----------------------|------------------------|--|
| R1-10 | Thirty (30) feet. | If principal building is two (2) stories or over, thirty-five (35) feet. |
| R1-8 | Twenty-five (25) feet. | If principal building is two (2) stories or over, thirty (30) feet. |
| R1-6 | Twenty-five (25) feet. | |
| R1-5 | Twenty (20) feet. | |
| R1-4 | Fifteen (15) feet. | If principal building is two (2) stories or over, twenty (20) feet. |
| R1-3 | Fifteen (15) feet. | If principal building is two (2) stories or over, twenty (20) feet. |
| R1-2.5 | Fifteen (15) feet. | If principal building is two (2) stories or over, twenty (20) feet. |
| (Ord 38.526, 1/20/81) | | |

5.2 Rear Yard - Slope equal to or greater than sixteen (16%) percent but less than twenty-six (26%) percent.

R1-10 Forty (40) Feet. (Ord 38.339, 9/20/77)

5.3 Rear Yard - Slope equal to or greater than twenty-six (26%) percent.

R1-10 Forty (40) Feet. (Ord 38.339, 9/20/77)

4.07 Automobile Parking Restrictions

4.07-1 There shall be provided at the time of erection of any dwelling at least two (2) permanently maintained parking spaces on the same lot with the dwelling for each dwelling. Such parking spaces shall not be less than ten (10) feet wide and twenty (20) feet long with adequate provisions for ingress and egress. No automobile driveway to provide access shall be less than eight (8) feet in width. (Ord 38.373, 5/4/76)

4.07-2 Deleted (Ord 38.384, 10/26/76)

4.08 Required Improvements

The above parking areas shall be improved as provided in Subsection 54.03. &3160; (Ord 38.19, 1/17/61)

4.09 Corner Lots

On corner lots the side yard regulations shall be the same as for interior lots, except on the street side of a corner or reverse corner lots, in which case the side yard shall not be less than fifty (50%) percent of the front yard required on the lots in the rear of such corner lots, but such side yard need not exceed ten (10) feet, nor shall it be less than the side yard required on interior lots. (Ord 38.22, 2/1/62)

4.10 Areas for Collecting and Loading Recyclable Materials

There shall be provided areas for collecting and loading recyclable materials in accordance with the requirements of subsection 54.15 of this Chapter. (Ord. 38.687, 5/19/94)

4.11 Front Yard Coverage

- a. A portion of the required front yard may be paved. The width of the area that may be paved shall not exceed the width of the garage, or fifty percent (50%) of the lot width measured at the front property line, whichever is greater. Patios within the required front yard are included in this calculation. Walkways which are not used for vehicular parking do not count towards coverage limits. Exceptions may be granted by the Planning Commission after public hearing notification, per Section 64 of this Chapter, for an "S" Zone Amendment application, as described in Section 42 of this Chapter. For Hillside properties, refer to Section 45 of this Chapter for additional requirements. For regulations pertaining to parking in the front yard, refer to Milpitas Municipal Code Section V-500. (Ord. 38.746, 9/21/99, Ord. 38.758, 7/3/01)
- b. For purposes of this section, "patio" shall mean a surfaced area (concrete, brick, stone, asphalt, pavers and the like) for recreational outdoor living use, not for vehicular parking purposes, within the required front yard. (Ord. 38.758, 7/3/01)
- c. For purposes of this section, "walkway" shall mean a created surface, such as brick, stone, concrete, asphalt, pavers and the like, not exceeding six (6) feet in width, intended to facilitate pedestrian or bicycle passage, and not used for vehicular parking purposes. (Ord. 38.758, 7/3/01)

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Section 5 - R1-X Single-Family Estate District

Section 5 "R1-X" Single-Family Estate District

(This section deleted/repealed by Ord 38.367, 12/16/75)

Section 6 "R2" One and Two Family Resident District

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- 6.01 Purpose
- 6.02 Principal Permitted Uses
- 6.03 Accessory Uses
- 6.04 Conditional Uses
- 6.05 Height Restrictions
- 6.06 Area, Lot Width, and Yard Requirements
- 6.07 Automobile Parking Restrictions
- 6.08 Corner Lots
- 6.09 Areas for Collecting and Loading Recyclable Materials

6.01 Purpose

To stabilize and protect the residential characteristics of the District and to promote and encourage a suitable environment for family life. The "R2" District is intended for suburban family homes and the community services appurtenant thereto. (Ord 38.19, 1/17/61)

6.02 Principal Permitted Uses

The following are the principal permitted uses in an "R2" District:
(Ord 38.19, 1/17/61)

6.02-1 Single-family dwellings.

6.02-2 Duplex or two-family dwellings.

6.02-3 Planned Unit Development, subject to provisions of Subsection 54.07.

6.02-4 Agriculture, except the raising of animals or fowl for commercial purposes, or the sale of any products at retail on the premises.

6.03 Accessory Uses

The following are the accessory uses permitted in an "R2" District:
(Ord 38.19, 1/17/61)

6.03-1 Rooming and boarding of not more than two (2) persons.

6.03-2 Home occupations and professional offices in home, as provided for in Subsection 54.08.

6.03-3 A State authorized, certified or licensed family care home, foster home or group home serving six (6) or fewer mentally disordered or otherwise handicapped persons or dependent or neglected children provided such home furnishes care on a 24 hour a day basis. (Ord 38.339, 2/19/74)

6.03-4 Other accessory uses and accessory buildings customarily appurtenant to a permitted use, as provided for in Subsection 54.09.

6.03-5 Small family day care home (Ord. 38.702, 8-15-95, amending Ord 38.339, 2/19/74)

6.04 Conditional Uses

6.04-1 Rooming and boarding houses for not over six (6) guests.

6.04-2 Licensed nursing home exceeding six (6) persons. (Ord 38.339, 2/19/74)

6.04-3 Schools (elementary and high) and park, playground or community center, owned and operated by a governmental agency or a non-profit community organization;

Permanent church building (except rescue mission and temporary revival);

Public service structures, not including corporation yards, storage or repair yards and warehouses; and

Golf course (except driving tee or range, miniature course and similar uses operated for commercial purposes).

6.04-4 Off-street public parking area.

6.04-5 Temporary tract offices and tract signs with the exception that no tract sign shall be permitted within six hundred (600) feet of a Santa Clara County Expressway. (Ord 38.207, 11/17/70)

6.04-6 Large family day care and day care center (Ord. 38.702, 8-15-95)

6.05 Height Restrictions

No principal building shall exceed either two and one-half (2 1/2) stories on thirty (30) feet in height. and no accessory building shall exceed one and one-half stories (1-1/2) stories or fifteen (15) feet in height. (Ord 38.19, 1/17/61)

6.06 Area, Lot Width, and Yard Requirements

The following minimum requirements shall be observed, except where increased for conditional uses. (Ord 38.19, 1/17/61)

- 6.06-1 Lot Area: Single-family -- Six thousand (6,000) square feet.
 Two-family -- Eight thousand (8,000) square feet.
- 6.06-2 Lot Width: Single-family -- Fifty-five (55) feet.
 Two-family -- Seventy (70) feet.
- 6.06-3 Front Yard : Single-family -- Twenty (20) feet.
 Two-family -- Twenty (20) feet.
- 6.06-4 Side Yards: Single-family -- One side five (5) feet, total both sides twelve (12) feet.
 If principal building is two (2) stories or over, one side six (6) feet, total
 both sides fifteen (15) feet.
 Two-family -- One side seven (7) feet, total
 both sides sixteen (16) feet.
 If principal building is two (2) stories or over, one side eight (8) feet, total
 both sides twenty (20) feet.
- 6.06-5 Rear Yard: Single-family -- Twenty-five (25) feet.
 Two-family -- Twenty-five (25) feet. If principal building is
 two (2) stories
 or over, thirty (30) feet.

6.07 Automobile Parking Restrictions

To be provided as required for "R1" District. (Ord 38.19, 1/17/61)

6.08 Corner Lots

On corner lots the side yard regulations shall be the same as for interior lots, except on the street side of a corner or reversed corner lot, in which case the side yard shall be not less than fifty (50) percent of the front yard required on the lots in the rear of such corner lot, but such side yard need not exceed ten (10) feet, nor shall it be less than the side yard required on interior lots. (Ord 38.22, 2/1/62)

6.09 Areas for Collecting and Loading Recyclable Materials

There shall be provided areas for collecting and loading recyclable materials in

accordance with the requirements of subsection 54.15 of this Chapter. (Ord. 38.687, 5/19/94)

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Section 7 "R3" Multiple Family District

Section 7 Contents

- 7.01 Purpose
- 7.02 Principal Permitted Uses
- 7.03 Accessory Uses
- 7.04 Conditional Uses
- 7.05 Height Regulations
- 7.06 Area, Lot Width, and Yard Requirements
- 7.07 Landscape and open space requirements
- 7.08 On-site utilities requirements
- 7.09 Automobile parking and loading areas
- 7.10 Areas for Collecting and Loading Recyclable Materials
- 7.11 Repealed) 7.12 Required Improvements
- 7.13 Corner Lots
- 7.14 Condominium Conversions

7.01 Purpose

To stabilize and protect the residential characteristics of the District and to promote, insofar as compatible with the intensity of land use, a suitable environment for family life. (Ord 38.19, 1/17/61)

7.02 Principal Permitted Uses

The following are the principal permitted uses in an R3 District: (Ord 38.19, 1/17/61)

7.02-1 Dwelling, multiple

7.02-2 Planned Unit Developments subject to provisions of subsection 54.07

7.02-3 Agriculture, except the raising of animals or fowl for commercial purposes, or the sale of any products at retail on the premises.

7.03 Accessory Uses

The following are the accessory uses permitted in an R3 District:
(Ord 38.19, 1/17/61)

7.03-1 Rooming and boarding of not more than two (2) persons.

7.03-2 Home occupations and professional offices in home, as provided for in subsection 54.08.

7.03-3 A State authorized, certified or licensed family care home, foster home or a group home serving six (6) or fewer mentally disordered or otherwise handicapped persons or dependent or neglected children provided such care home furnishes care on a 24-hour a day basis. (Ord 38.339, 2/19/74)

7.03-4 Other accessory uses and accessory buildings customarily appurtenant to a permitted use, as provided for is subsection 54.09.

7.03-5 Small family day care home (Ord 38.702, 8-15-95)

7.04 Conditional Uses

7.04-1 Rooming and boarding houses for any number of quests.

7.04-2 Group dwellings.

7.04-3 Hospital, sanitarium or licensed nursing home exceeding six (6) persons except for the following: clinic, animal hospital, and hospital, sanitarium, or nursing home used primarily for contagious, mental or drug or alcohol addict cases. (Ord 38.339, 2/19/74)

7.04-4 Large family day care and day care center (Ord 38.702, 8-15-95; Deleted. (Ord 38.591, 11/5/85)

7.04-5 Incidental services, such as restaurants and retail sales to serve residents, provided there is no exterior display or advertising and such activities are conducted in spaces which are integral parts of a main building excluding Adult Businesses, as defined in Subsection 54.18. (Ord 38.711, 8/20/96)

7.04-6 Social halls, lodges, fraternal organizations and clubs, except those operated for a profit.

7.04-7
School (elementary and high) and park, playground or community

center, owned and operated by a governmental agency or a non-profit community organization;

permanent church buildings (except rescue mission and temporary revival);

public service structures, not including corporation yards, storage or repair yards and warehouses; and

golf course (except driving tee or range, miniature course and similar uses operated for commercial purposes).

7.04-8 Deleted. (Ord 38.349, 11/19/74)

7.04-9 Temporary tract offices and tract signs with the exception that no tract sign shall be permitted within six hundred (600) feet of a Santa Clara County Expressway. (Ord 38.207, 11/17/70)

7.04-10 Condominiums. (Ord 38.485, 7/4/79)

7.04-11 Condominium conversion. (Ord 38.485, 7/3/79)

7.05 Height Regulations

No principal building shall exceed either three and one-half (3 1/2) stories or thirty-five (35) feet in height and no accessory building shall exceed either two (2) stories or twenty-five (25) feet in height. This height restriction can be waived where a Planned Unit Development has been approved at a density in excess of twenty (20) units per gross acre in accordance with the provisions of Section 54.07-6(c). (Ord 38.610, 9/2/86)

7.06 Area, Lot Width, and Yard Requirements

The following minimum requirements shall be observed, except where increased for conditional uses.
(Ord 38.57, 6/18/64)

7.06-1 Lot area:

R3-20 Eight thousand (8000) square feet.

7.06-2 Lot area per dwelling unit:

R3-20 Two thousand (2000) square feet. This minimum requirement can be waived where a Planned Unit Development has been approved at a higher density in accordance with the provisions of Section

54.07(c). (Ord 38.610, 9/2/86)

7.06-3 Lot width:

R3-20 Seventy (70) feet.

7.06-4 Front yard:

R3-20 Twenty (20) feet.

7.06-5 Side yards:

R3-20 One side five (5) feet, total both sides twelve (12) feet.

If principal building is two (2) or two and one-half (2-1/2) stories high, one side ten (10) feet, total both sides twenty-five (25) feet.

If principal building is three (3) stories or three and one-half (3-1/2) stories, one side twelve (12) feet, total both sides thirty (30) feet.

7.06-6 Rear yard:

R3-20 Thirty (30) feet.

If principal building is two (2) or two and one-half (2-1/2) stories, thirty-five (35) feet.

If principal building is three (3) or three and one-half (3-1/2) stories high, forty (40) feet.

7.06-7 Provided that all other requirements of this Ordinance are met, the required area per dwelling unit specified above may be reduced to 1000 square feet for each efficiency apartment, as defined herein, contained in a multiple-family dwelling.

7.07 Landscape and open space requirements

7.07-1 A minimum of twenty-five (25%) percent of the total lot area (not including paved parking area) shall be landscaped or recreational open space, exclusive of parking and vehicular traffic area and this shall be shown on the site plan in detail for Planning Commission approval. (Ord 38.57, 6/18/64)

7.07-2 An average of two hundred (200) square feet of "Usable Open Space" shall be provided for each dwelling unit. "Usable Open Space" shall mean any open space, the smallest dimension of which is at least seven (7) feet and which is not used as storage or for movement of motor vehicles; except that yards abutting a public street, which are not adequately screened for privacy, in the opinion of the Planning Commission, shall not qualify as usable open space. Balconies, porches, or roof decks may be considered usable open space when properly developed for work, play or outdoor living areas. At least thirty (30%) of required open space shall be contiguous to and provide for private usable of the individual dwelling unit. (Ord 38.57, 6/18/64)

7.08 On-site utilities requirements

Where the allowable dwelling units exceed six (6) for a single parcel or the total area to be subdivided exceeds three (3) acres, all on-site utilities are to be placed underground. (Ord 38.57, 6/18/64)

7.08-1 Television antennas are to be centralized for structures of four (4) or more units.

7.09 Automobile parking and loading areas (Ord 38.57, 6/18/64)

7.09-1 For Multiple-Family dwellings, there shall be provided at the time of erection of a new dwelling or an addition to an existing dwelling at least two (2) permanent automobile off-street parking spaces for each dwelling unit plus additional guest spaces equal to twenty (20%) percent of the total amount required in a Multiple-Family dwelling. All required parking spaces shall be a minimum of eight feet six inches (8' 6") wide. (Ord 38.648, 11/7/89)

7.09-2 A minimum of one (1) off-street parking space is required for each efficiency apartment, as defined herein.

7.09-3 All Multiple-Family dwelling units that require two (2) permanent off-street parking spaces each, shall have at least one (1) space covered. Efficiency apartments, as defined herein, may provide an uncovered off-street parking space.

7.10 Areas for Collecting and Loading Recyclable Materials

There shall be provided areas for collecting and loading recyclable materials in accordance with the requirements of subsection 54.15 of this Chapter. (Ord. 38.687, 5/19/94) (Ord 38.384, 10/26/76)

7.11 Repealed (Ord 38.384, 10/26/76)

7.12 Required Improvements

Parking and loading areas shall be improved as provided in Subsection 54.03.
(Ord 38.57, 6/18/64)

7.13 Corner Lots

On corner lots the side yard regulation shall be the same as for interior lots except on the street side of a corner or reversed corner lot, in which case the side yard shall not be less than fifty percent (50%) of the front yard required on the lots in the rear of such corner lot, but such side yard need not exceed ten (10) feet, nor shall it be less than the side yard required on interior lots. (Ord 38.57, 6/18/64)

7.14 Condominium Conversions

7.14-1 Purpose -

The City of Milpitas is concerned with maintaining an adequate supply of housing for its citizens including rental housing. The adopted Housing Element of the Milpitas General Plan contains the following goal statements, pertinent to this matter:

-- To encourage the provision of a variety of individual choice of tenure, housing type, and location.

-- Within our ability, to provide opportunities for Milpitas citizens to meet their housing needs in the housing market.

-- To encourage the cooperation within the housing market so that suppliers and consumers can function more effectively, consistent with community growth goals.

-- That zoning is to be used in ways which will encourage variety and mix in housing types and provide adequate sites for housing persons of all races, ages, ethnic groups, and income levels in Milpitas.

Housing is considered a basic necessity and any scarcity within the community area has both a direct and indirect adverse impact on public safety, health and welfare (including but not limited to, health and safety problems relating to the quality of housing). In times of low vacancy rate and high housing cost many people cannot afford to buy homes within the community or its nearby market area and are forced to rent housing in apartments or other multiple dwellings. The unregulated conversion of rental apartment units to condominiums ownership may aggravate such a serious situation and force citizens to move out of the community.

7.14-2 Declaration of Housing Shortage

When the number of vacant apartments being offered for rent or lease in the City is equal to or less than six (6%) percent of the total number of such dwelling units offered for and under rental or lease agreement in the City, a housing shortage exists which is inconsistent with the purposes of this Chapter and with the declared goals of the City relating to its Housing Element of its adopted General Plan.

7.14-3 Determination of Vacancy Rate and Surplus

Whenever an application for a condominium conversion is filed, the Planning Division shall conduct a vacancy rate survey of the existing rental apartment dwelling units in the City. This survey shall be completed within forty-five (45) days from the date the application for condominium conversion is deemed complete. (Ord. 38.692, 9/2/94)

7.14-4 An application for condominium conversion of existing multiple family rental housing units to residential condominium ownership shall not be approved unless there is a vacancy surplus of existing apartments which equals six (6%) percent or greater of the total number of such units, within the City, as of the most recent determination made pursuant to Section 7.14-3; and if all of the adult tenants lawfully in possession of two-thirds of the units indicate their desire to convert such project to condominium ownership, in writing, to the City. In no event shall a number of lots, parcels, units, or rights of exclusive occupancy proposed exceed the vacancy surplus by forty percent (40%). Nothing herein contained shall be construed to prevent the payment of any consideration by landlord to tenant, provided however, consent obtained by payment to a tenant shall not be considered by the Council to be a free and willing consent unless payment of the same consideration is made to all tenants regardless of consent. (Ord 38.692, 9/2/94) 7.14-5
Development Standards

The following standards are required for any Residential Condominium Conversion development.

(a) Off-Street Parking:

Conformance to the current off-street parking standards as contained in Section 7, "R3" Multi-Family District. (b) Landscape & Open Space:

Conformance to the current landscape and open space requirements as contained in Section 7, "R3" Multi-Family District.

(c) Housing and Fire:

Conformance to the current Housing codes and Fire Regulations of the City of Milpitas.

(d) Meters and Control Valves:

The consumption of gas and electricity within each unit shall be separately metered so that the unit owner can be separately billed for each utility. A water shut-off valve shall be provided for each unit or for each plumbing fixture.

(e) Overcurrent Protection:

Each unit shall have its own panel board for all electrical circuits which serve the unit.

(f) Impact Sound Insulation:

Wall and floor-ceiling assemblies shall conform to the sound installation performance criteria promulgated in Title 25, California Administrative Code, Section 1092, or its successor, and may be only replaced by another floor covering that provides the same or greater insulation.

7.14-6 Prohibition of Discrimination Against Prospective Buyers with Children.

In no case shall a project which can reasonably accommodate children, as determined by the Planning Commission, limit initial sales to households or individuals without children.

7.14-7 Protection of Tenant Rights

Approval of a Conditional Use Permit for Condominium Conversion is subject to the City Council finding that the requirements of Section 66427.1 (a) and (b) of the California Subdivision Map Act have been completed in accordance with State Law. Said Sections deal with (a) notice to tenant(s) of intention to convert, and (b) tenant(s) exclusive right to purchase their unit(s) upon the same terms and conditions that such unit(s) will be initially offered to the general public or terms more favorable to the tenant(s).

(7.14 through 7.14-7 (except 7.14-4), Ord 38.485, 7/3/79).

Amendments: (Ord. 38.485, Adopted 7/3/79: Sections 7.14 through 7.14-7, except 7.14-4)

(Ord. 38.692, Adopted 9/2/94: Sections 7.14-3 and 7.14-4)

(Ord. 38.702, Adopted 8/15/95: Sections 7.03-5 and 7.04-4 added)

(Ord. 38.711, Adopted 8/20/96: Section 7.04.5 amended)

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Section 8 - R4 Multi-Family Very High Density District

(Ord 38.759, 4/2/02)

8.01 Purpose and Intent

To stabilize and protect the residential characteristics of the District and to promote a suitable residential environment. The “R4” District is intended to provide for higher-density residential “villages” structured around transit stations, streets, creek side open spaces, trails and parks.

8.02 Principal Permitted Uses

The following are the principal permitted uses in an R4 District:

8.02-1 Multiple family dwellings.

8.02-2 Planned Unit Developments subject to provisions of subsection 54.07.

8.03 Accessory Uses

The following are the accessory uses permitted in an “R4” District:

8.03-1 Home occupations and professional offices in home, as provided for in subsection 54.08.

8.03-2 A State authorized, certified or licensed family care home, foster home or group home serving six (6) or fewer mentally disordered or otherwise handicapped persons or dependent or neglected children provided such care home furnishes care on a 24-hour a day basis.

8.03-3 Other accessory uses and accessory buildings customarily appurtenant to a permitted use, as provided for in subsection 54.09.

8.03-4 Small family day care home.

8.04 Conditional Uses

8.04-1 Rooming and boarding houses for any number of guests.

8.04-2 Group dwellings.

8.04-3 Large family day care homes and day care centers.

8.04-4 Live-work units; allowed commercial uses to be specified through the use permit process.

8.04-5 Park, playground or community center, owned and operated by a governmental agency or a non-profit community organization.

8.04-6 Public service structures, not including corporation yards, storage or repair yards and warehouses.

8.04-7 Temporary tract offices and tract signs with the exception that no tract sign shall be permitted within six hundred (600) feet of a Santa Clara County Expressway.

8.04-8 Condominium conversion, subject to the regulations set forth in Section 7.14.

8.05 Development Standards

8.05-1 Structure Height. No building shall exceed four (4) stories and sixty (60) feet in height, including special architectural elements such as towers and spires.

8.05-2 Residential Density. Residential development shall be a minimum of thirty-one (31) dwelling units per gross acre and shall not exceed forty (40) dwelling units per gross acre.

8.05-3 Front and Street Side Setbacks.

- a. There shall be a minimum building setback of eight (8) feet and a maximum building setback of fifteen (15) feet from back of sidewalk. The sidewalk shall be based on either the existing sidewalk or an assumed 10-foot wide sidewalk, whichever is wider.
- b. Where a public easement prevents a building from being located at its required minimum or maximum setback lines, the building shall be located as close to the back of said easement as possible.

- c. Porches, stairs and balconies may be located in the front and street side setback areas provided they are incorporated into an integrated landscape concept where the majority of the setback areas are reserved for landscaping. Stairs and porches may project up to six (6) feet into the minimum setback.
- d. Required front and street side setback areas shall be landscaped.

8.05-4 Interior Side and Rear Yard Setbacks.

- a. Interior Side Yard. Minimum ten (10) feet
- b. Rear Yard. Minimum ten (10) feet
- c. Balconies, bay windows and awnings may project up to six (6) feet into the interior side or rear setback areas.
- d. Interior side and rear setback areas shall be landscaped but may also be occupied by accessory buildings and drive aisles.

8.06 Off-Street Parking

8.06-1 There shall be at least the following:

- a. Studio: one (1) covered automobile stall per unit.
- b. One (1) bedroom: one and one-half (1½) covered automobile stalls per unit.
- c. Two (2) or more bedrooms: two (2) covered automobile stalls per unit.
- d. Guest parking: fifteen percent (15%) of automobile stalls required in (a) through (c) above. May be covered or uncovered.
- e. Bicycle parking: five percent (5%) of automobile stalls required in (a) through (d) above.

8.06-2 Parking is prohibited in the front and street side setback areas.

8.06-3 Carports shall be no more than eight (8) parking stalls wide and shall be separated from one another by a four (4) foot wide (interior dimension) landscape island, planted with a tree.

8.07 Park and Open Space Requirements for Residential Uses

8.07-1 All residential projects shall provide park land at a ratio of three and one-half (3½) acres per one thousand (1,000) population. Up to one and one-half (1½) of each three and one-half (3½) total park acres required (43%) may be satisfied by the provision of private recreational areas. The remaining park land

requirement must be satisfied by either dedication of land to the City for public parks and open space, or payment of an in-lieu fee, as set forth in Section 9 (Park Dedication) of the Milpitas Subdivision Ordinance (Title XI, Chapter 1).

8.07-2 A minimum of twenty-five percent (25%) of the total site shall be usable open space or recreational facilities. Balconies, porches, or roof decks may be considered usable open space when properly developed for work, play or outdoor living areas.

8.07-3 A minimum of two hundred (200) square feet of "Usable Open Space" shall be provided for each dwelling unit.

8.08 Utilities

8.08-1 Utilities shall be placed in underground or subsurface conduits.

8.08-2 All mechanical equipment, ground transformers and meters shall be located and screened to minimize visual impacts.

8.08-3 Rooftop mechanical equipment shall be concealed from street level views through roof design that is architecturally integrated with the building, such as equipment wells and parapets.

8.08-4 Public utility distribution meters, vaults and similar installations shall be consolidated in a single area whenever possible and located away from highly visible areas such as street corners and public open spaces.

8.08-5 Backflow preventors shall be located within landscaped setback areas and painted black or dark green to minimize visual impact. Where no landscaped setback areas exist the backflow preventors shall be incorporated into the front of the building to minimize visual obtrusiveness.

8.08-6 Refuse and recycling containers shall not be visible from a public or private street. Such containers shall be stored either within the parking facility of the building or within a vehicular accessway with appropriate screening.

8.08-7 Trash enclosure walls shall incorporate building materials and colors that match the architecture of the building, and be well landscaped.

8.08-8 All telecommunication antennas shall be building façade or roof mounted and screened appropriately.

8.08-9 On Main Street only telecommunication facilities disguised to appear as a part of the building architecture (i.e. "stealth" antennas) may be used.

8.09 Additional Development Requirements

All improvements shall conform to the Midtown Specific Plan, including the Design Guidelines and Standards set forth in Chapter 8.

8.10 Affordable Housing

Affordable housing units should be provided in all new housing projects. While twenty percent (20%) is the minimum goal, affordable unit requirements will be determined on a project by project basis, taking into consideration the size and location of the project, the type of housing unit, proximity to transit and the mix of affordable units in the vicinity.

8.11 Exceptions to Standards

8.11-1 Exceptions to all but the use, density, and park land requirement regulations (Subsections 8.02, 8.03, 8.04, 8.05-2 and 8.07-1) of this Section 8 may be approved by the Planning Commission through approval of a Conditional Use Permit in accordance with the requirements of Section 57.

8.11-2 In addition to the required findings under Chapter 57, the Planning Commission must be able to make the following two additional findings for such exceptions:

- a. The exceptions meet the design intent identified within the Specific Plan and do not detract from the overall architectural, landscaping and site planning integrity of the proposed development.
- b. The exceptions allow for a public benefit not otherwise obtainable through the strict application of the specified standard.

Section 9 "AR" Agricultural Residence District

Section 9 Contents

- 9.01 Purpose
- 9.02 Principal Permitted Uses
- 9.03 Accessory Uses
- 9.04 Conditional Uses
- 9.05 Height Regulations
- 9.06 Area, Lot width and Yard Requirements
- 9.07 Automobile Parking Restrictions
- 9.08 Required Improvements

9.01 Purpose

To stabilize and protect the residential characteristics of certain portions of the hillside area where due to slope and inherent geologic problems it is necessary to maintain low intensity development for the public welfare. The AR District is intended for semi-rural residential homes and services appurtenant thereto.

9.02 Principal Permitted Uses

The following are the principal permitted uses:

9.02-1 Single-family dwellings.

9.02-2 Planned Unit Developments subject to provisions of Subsection 54.07.

9.02-3 Agriculture, except the raising of animals or fowl for commercial purposes, or the sale of any product at retail on the premises.

9.02-4 Mobile homes subject to provisions of Subsection 54.14 .
(Ord 38.541, 4/20/82)

9.03 Accessory Uses

The following are the accessory uses permitted:

9.03-1 Rooming and boarding of not more than two (2) persons.

9.03-2 Home occupations and professional offices in the home as provided for in Subsection 54.08.

9.03-3 A State authorized, certified or licensed family care home, foster home or group home serving six (6) or fewer mentally disordered or otherwise handicapped persons or dependent or neglected children provided such home furnishes such care on a 24 hour a day basis.

9.03-4 Other accessory uses and accessory buildings customarily appurtenant to a permitted use, as provided for in Subsection 54.09.

9.03-5 Family day-care homes for not more than six (6) children.

9.04 Conditional Uses

The following uses may also be permitted if their location is first approved by the Commission, as provided for in Section 57.

9.04-1

Parks and playgrounds for community centers, owned and operated by a governmental agency or a non-profit community organization;

Permanent church buildings (except rescue mission and temporary revival);

Public service structures, not including corporation yards or storage or repair yards, warehouses;

Golf course (except driving tee or range, miniature course and similar uses operated for commercial purposes).

9.04-2 Off-street public parking areas.

9.04-3 Temporary tract offices and tract signs with the exception that no tract sign shall be permitted within six hundreds (600) feet of a Santa Clara County Expressway.

9.04-4 The raising of animals or fowl for commercial purposes, or the sale of any agricultural products at retail on the premises. (Ord 38.633,)

9.05 Height Regulations

No principal building shall exceed either three and one-half (3-1/2) stories or forty (40) feet in height, and no accessory building shall exceed seventy-five (75) feet in height.

9.06 Area, Lot width and Yard Requirements

The following minimum requirements shall be observed, except where increased for conditional uses. The minimum requirements shall be one of the following for the district classification as designated on the Zoning Map.

- 9.06-1 Lot Area: AR - 20 Twenty (20) acres
AR - 15 Fifteen (15) acres
- 9.06-2 Lot Width: AR - 20 Two hundred (200) feet
AR - 15 One hundred seventy-five (175) feet
AR - 10 One hundred fifty (150) feet
- 9.06-3 Front, Side AR - 20 Forty (40) feet & Rear
AR - 15 Forty (40) feet
(Ord 38.399, 9/20/77)

9.07 Automobile Parking Restrictions

9.07-1 For Dwellings

There shall be provided at the time of erection of any dwelling at least two (2) permanently maintained parking spaces, on the same lot with the dwelling, for each dwelling unit. Such parking spaces shall not be less than ten (10) feet wide and twenty (20) feet long with adequate provision for ingress and egress. No automobile driveway to provide access shall be less than fourteen (14) feet in width.

9.07-2 Repealed (Ord 38.384, 10/26/75)

9.08 Required Improvements

The above parking areas shall be improved as provided in Subsection 54.03 (Section 9 added by Ord 38.355, 9/15/75)

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Section 17 "CO" Administrative and Professional Office District

Section 17 Contents

- 17.01 Purpose
- 17.02 Uses Permitted
- 17.03 Deleted
- 17.04 Conditional Uses
- 17.05 Height Regulations
- 17.06 Area, Lot Width and Yard Requirements
- 17.07 Off-Street Parking Requirements
- 17.08 Areas for Collecting and Loading Recyclable Materials

17.01 Purpose

To provide a district for medical, business, and professional offices, and medical and dental clinics. (Ord 38.15,)

17.02 Uses Permitted

Principal permitted uses:

17.02-1 Medical.

17.02-2 Administrative, executive, and editorial offices.

17.02-3 Professional offices (for example: lawyers, engineers, architects)

17.02-4 Financial offices, including banks, real estate and other general business offices.

17.02-5 Planned Unit Developments.

17.02-6 Any other use which is determined by the Commission to be of the same general character as the above permitted uses.

17.02-7 Agriculture, except the raising of animals or fowl for commercial purposes, or the sale of any products at retail on the premises.

17.03 Deleted (Ord 38.15,)

17.04 Conditional Uses

17.04-1 Medical and dental laboratories, not including the manufacture or pharmaceutical or other products for general sale or distribution.

17.04-2 Public and quasi-public uses appropriate to the District, such as hospitals and professional, business and technical schools.

17.04-3 Mortuaries and crematories.

17.04-4 Schools and studios, for arts and crafts, photography, music and dance.

17.04-5 Restaurants serving alcoholic beverages when found incidental to the permitted use and intended to serve occupants and patrons of the permitted use and conducted and entered from within

the building and provided there is no exterior display of advertising.

17.04-6 Automobile service station with or without service bays. The entrance to the service bays shall not be open to the street but shall be so designed to face the rear or interior side property line. (Ord 38.662,)

17.04-7 Temporary tract signs with the exception that no tract signs shall be permitted within six hundred (600) feet of a Santa Clara County Expressway. (Ord 38.207,)

17.04-8 Churches.

17.04-9 Small and large family day care home, and day care center (Ord 38.702, 8-15-95)

17.05 Height Regulations

No principal building shall exceed three (3) stories or thirty-five (35) feet in height, and no accessory building shall exceed two (2) stories or twenty-five (25) feet in height. (Ord 38.5,)

17.06 Area, Lot Width and Yard Requirements

The following minimum requirements shall be observed, except where increased for conditional uses. (Ord 38.15,)

Lot Areas: None

Lot Coverage: None

Yards: Front Ten (10) feet

Side Ten (10) feet

Rear Ten (10) feet, except when abutting any "R" district, then not less than required in said "R" District.

(Ord 38.15,)

17.06-1 Floor Area Ratio

Subject to XI-10-2.38-3.1, the Floor Area Ratio is .50 (50%). (Ord. 38.713, 12-3-96)

17.07 Off-Street Parking Requirements

There shall be provided off-street parking spaces for automobiles in accordance with the requirements of Section 53. All such parking spaces shall be improved as provided for in Subsection 54.03. (Ord 38.384,)

17.07-1 Deleted (Ord 38.384,)

17.08 Areas for Collecting and Loading Recyclable Materials

There shall be provided areas for collecting and loading recyclable materials in accordance with the requirements of subsection 54.15 of this Chapter. (Ord. 38.687, 5/19/94)

UPDATE LOG:

(Ord. 38.713, 12-3-96 - added sec. 17.06-1)

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Section 18 "C1" Neighborhood Commercial

Section 18 Contents

- 18.01 Purpose and Intent
- 18.02 Principal Permitted Uses
- 18.03 Conditional Uses
- 18.04 Development Standards
- 18.05 Off-Street Parking Requirements
- 18.06 Areas for Collecting and Loading Recyclable Materials

The following regulations shall apply to the C1 Neighborhood Commercial District:
(Ord 38.123, 5/7/58)

18.01 Purpose and Intent

To provide for general commercial needs of neighborhood areas of the City and to promote stable, attractive commercial development which will afford a pleasant shopping environment and will complement the essential residential character of the neighborhood. The Neighborhood Commercial District shall contain, as permitted uses, those activities which primarily provide for the day-to-day shopping needs of the residential neighborhood it is located in. It shall not include uses which generate loud noises or unpleasant odors. It shall not include retail stores, offices or service establishments which are not open to minors or which are designed to attract customers and traffic from areas other than the neighborhood area in which they are located. (Ord 38.371, 2/17/76)

18.02 Principal Permitted Uses

The following are the principal permitted uses in a C1 Neighborhood Commercial District: (Ord 38.123, 5/7/68)

18.02-1 Retail stores, offices and service establishments including:

1. Art and antique stores.
2. Artist supply stores.
3. Bakery goods stores intended to serve only that neighborhood area in which they are located.
4. Banks.
5. Barber shops and beauty shops.
6. Deleted (Ord 38.511,)
7. Candy stores.
8. Christmas tree sales lots.
9. Deleted (Ord 38.511,)
10. Cleaning and laundry establishments intended to serve only that neighborhood area in which they are located. [See sec. 18.03-18 re self-service laundry]
11. Clothing stores intended to serve only that neighborhood area in which they are located.
12. Department stores intended to serve only that neighborhood area in which they are located.
13. Drug stores intended to serve only that neighborhood area in which they are located.
14. Retail florists.
15. Deleted (Ord 38.511,)
16. Furniture stores.
17. Gift shops.
18. Hardware stores intended to serve only that neighborhood area in which they are located.
19. Hobby shops.
20. Deleted (Ord 38.511,)
21. Household repair shops.

22. Interior decorating shops.
23. Jewelry stores.
24. Leather goods and luggage stores.
25. Deleted (Ord 38.511,)
26. Locksmiths.
27. Millinery shops.
28. Music stores.
29. Deleted (Ord 38.511,)
30. Deleted (Ord 38.511,)
31. Office, business or professional.
32. Optician and optometrist shops.
33. Deleted (Ord 38.511,)
34. Deleted (Ord 38.511,)
35. Photographic supply stores.
36. Photography studios.
37. Picture framing shops.
38. Retail pressing establishments.
39. Realtors and real estate offices.
40. Deleted (Ord 38.511,)
41. Deleted (Ord 38.511,)
42. Shoe repair shops.
43. Shoe stores intended to serve only that neighborhood area in which they are located.
44. Deleted (Ord 38.511,)
45. Sporting goods stores.
46. Stamp and coin stores.
47. Stationery stores.
48. Retail tailor and dressmaking shops.
49. Toy stores.
50. Travel bureaus.
51. Deleted (Ord 38.511,)
52. Watch and clock repair shops.

- | | |
|---------|---|
| 18.02-2 | Any other uses which are added to this list by the City Planning Commission, in accord with the procedure prescribed in Section XI-10-54.02. (Ord 38.123, 5/7/68) |
| 18.02-3 | Parking lots improved in conformity with the standards prescribed for required off-street parking facilities in Section XI-10-54.03. (Ord 38.123, 5/7/68) |
| 18.02-4 | Accessory structures and uses, not including warehouses, on the same site as a permitted use. (Ord 38.123, 5/7/68) |

18.03 Uses Permitted Subject to Receiving a Conditional Use Permit

The following uses may also be permitted if their location is first approved by the Commission, as provided for in Section 57:

1. Arcades, with mechanical or electronic games or games of skill or science. (Ord 38.551, 9/7/82)
2. Automobile service stations with or without service bays. The entrances to the service bays shall not be open to the street but shall be so designed to face the rear or interior side property line. (Ord 38.662,)
3. Book and rental libraries.
4. Cigar store (tobacco shop).
 - 4.1 Small and large family day care home, and day care center (Ord 38.702, 8-15-95)
5. Churches and other religious institutions.
 - 5.1 Commercial athletic facilities, conducted wholly within a building, such as but not limited to health spas and gyms, tennis, handball or racquetball, etc. (Ord 38.551, 9/7/82)
6. Food stores, delicatessens, and supermarkets.
7. Household appliance stores.
8. Liquor stores. (38.511, 1980)
9. Music and dance studios.
10. Newsstands.
11. Paint and wallpaper stores.
12. Pet and bird stores.
13. Post offices.
14. Private clubs and lodges.
15. Public buildings and grounds.
16. Public utility and public service pumping stations, power stations, drainage ways and structures, storage tanks and transmission lines found by the City Planning Commission to be necessary for the public health, safety or welfare.
17. Restaurants or restaurants which include on-premise consumption of alcoholic beverages when found clearly incidental to the primary food service but excluding dancing or live entertainment.
18. Self-service laundry.
19. Temporary tract advertising signs with the exception that no tract signs shall be permitted within six hundred (600) feet of a Santa Clara County Expressway.
20. Theater, indoor, excluding Adult Theaters or Adult Motion Picture Theaters, as defined in Subsection 54.18. (Ord 38.551, Ord. 38.711 8/20/96)
21. Variety stores.
22. Vehicle oriented window service facility.
23. Video Sales and Rental Store. (Ord. 38.697; 12/20/94)

18.04 Development Standards

- 18.04-1 Height
Uses located in the C1 Neighborhood Commercial District shall be limited so as not to allow a building or structure to exceed two and one-half (2-1/2) stories or thirty-five (35) feet in height. Freestanding sign heights are regulated by Ordinance No. 124, Signs enacted as Chapter 30, Title XI of the Milpitas Municipal Code. (Ord 38.185,)
- 18.04-2 Front Yards
Same as required in the R Districts. (20 feet)
- 18.04-3 Side and Rear Yards
(a) Deleted (Ord 38.473,)
(b) Where the rear or side of a commercial lot abuts a Residential District, there shall be a rear yard or side yard of not less than fifteen (15) feet in depth or width, or both.
- 18.04-3.1 Floor Area Ratio
Subject to XI-10-2.38.2 the Floor Area Ratio is .35 (35%). (Ord. 38.713, 12-3-96)
- 18.04-4 Standard Conditions
(a) All uses and operations-except off-street parking and loading, reverse vending machines or mobile recycling units and other uses and activities customarily conducted out-of-doors-shall be conducted within a completely enclosed building. (Ord 38.629,)
(b) All storage areas shall be within a completely enclosed building or behind a solid wall or tight board fence a minimum of six (6) feet in height.
(c) All operating equipment to be located on the roof of any building shall be enclosed so as to be shielded from view in a manner to the approval of the Planning Commission.
Modifications regarding operating equipment and screen materials at existing developed sites shall be subject to the provisions of Section 42.10 of this Chapter. (Ord. 38.716, 9-15-98)

18.05 Off-Street Parking Requirements

There shall be provided off-street parking spaces for automobiles in accordance with the requirements of Section XI-10-53. All such parking spaces shall be improved as provided for in Subsection XI-10-54.03. (Ord 38.384,)

18.05-1 through 18.05-9 Deleted (Ord 38.384,)

18.06 Areas for Collecting and Loading Recyclable Materials

There shall be provided areas for collecting and loading recyclable materials in accordance with the requirements of subsection 54.15 of this Chapter. (Ord. 38.687, 5/19/94)

UPDATE LOG:

(Ord. 38.697; 12/20/94 - Sec. 18.03-23 was added)
(Ord. 38.702, 8-15-95 - Sec. 18.03-4.1 added)
(Ord. 38.711, 8/20/96 - Sec. 18.03.20 amended)
(Ord. 38.713, 12-3-96 - Sec. 18.04-3.1 added)
(Ord. 38.716, 9-15-98 Sec 18.04-4(c) amended)

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Section 19 "C2" General Commercial District

Section 19 Contents

- 19.01 Purpose and Intent
- 19.02 Principal Permitted Uses
- 19.03 Conditional Uses
- 19.04 Development Standards
- 19.05 Traffic Hazards
- 19.06 Off-Street Parking Requirements
- 19.07 Standard Conditions
- 19.08 Areas for Collecting and Loading Recyclable Materials

The following regulations shall apply to the "C2" General Commercial District:
(Ord 38, 3/15/55)

19.01 Purpose and Intent

The "C2" District is intended to provide for the wide range of retail sales and personal and business services primarily oriented to the automobile customer to provide for the general commercial needs of the City and to promote stable, attractive commercial development which will afford a pleasant shopping

environment. It is intended to include those commercial uses in which shopping may be conducted by people walking to several stores as in a Center and may include uses customarily of a single-purpose character served from an immediately parked automobile. Special development standards are incorporated in the district regulations in order to provide for orderly development and to minimize potential traffic hazards. The "C2" District, when appropriate, will be located along major thoroughfares and in accordance with the adopted City of Milpitas General Plan.

19.02 Principal Permitted Uses

No building, structure or land shall be used and no building or structure shall be hereafter erected, structurally altered or enlarged, except for the following uses:

19.02.1 Any use permitted in the "C1" Neighborhood Commercial District.

2 Antique store. (Ord 38.637, 8/16/88)

3 Appliance store or business.

4 Auditorium.

5 Barber shop, beauty salon. (Ord 38.637, 8/16/88)

6 Book store except adult book store which is provided for in Subsection 54.18 (Ord 38.551, 9/7/82; Ord 38.711, 8/20/96)

7 Banks and similar financial institutions.

8 Bowling alley. (Ord 38.551, 9/7/82)

9 Business college or private school operated as a commercial enterprise (except businesses which teach all types of acupuncture, massage or similar procedures), if not found objectionable due to noise, odor, vibration or other similar cause. (Ord. 38.694, 10/4/94)

10 Blueprinting, Photostatting, and photo developing.

11 Catering establishing.

12 Deleted (Ord 38.702, 8-15-95, deleting Ord 38.637, 8/16/88)

13 Commercial athletic facilities, conducted wholly within a building, such as but not limited to health spas and gyms, tennis, handball or racquetball, etc. (Ord 38.551, 9/7/82)

- 14 Department or furniture stores.
- 15 Florist store. (Ord 38.637, 8/16/88)
- 16 Fraternal or Union Halls and Offices.
- 17 Hardware store. (Ord 38.637, 8/16/88)
- 18 Deleted (Ord. 38.710 08/06/96)
- 19 Janitorial services and window cleaning services.
- 20 Jewelry store. (Ord 38.637, 8/16/88)
- 21 Laundries and dry cleaning.
- 22 Mail box rentals. (Ord 38.637, 8/16/88)
- 23 Newspaper printing, printing, lithographing and publishing.
- 24 Medical or dental clinic and laboratory.
- 25 Music store or music instruction.
- 26 Offices: Business, Professional, Administrative, etc. (Ord 38.637, 8/16/88)
- 27 Photo finishing store.
- 28 Rentals: Sickroom supplies, costumes, and party equipment, etc. (Ord 38.637, 8/16/88)
- 29 Repairs, rental and distribution of office or business equipment.
- 30 Retail stores or business. (Ord 38.637, 8/16/88)
- 31 Shoe stores and repair. (Ord 38.637, 8/16/88)
- 32 Telephone answering service. (Ord 38.637, 8/16/88)
- 33 Telephone exchange. (Ord 38.637, 8/16/88)
- 34 Deleted (Ord. 38.705, 8/15/95; Ord 38.637, 8/16/88)

35 Thrift store. (Ord 38.637, 8/16/88)

36 Upholstering shop, if conducted wholly within a completely enclosed building.

37 Deleted (Ord 38.697, 12/20/94)

38 Wholesale or discount merchandise broker, excluding exterior storage.

39 Other uses similar to the above as provided for in Subsection 54.02.

19.03 Conditional Uses

The following uses may also be permitted if their location is first approved by the Commission, as provided for in Section 57:

19.03.1 Arcades, with mechanical or electronic games or games of skill or science, excluding Adult Arcades as defined in Subsection 54.18. (Ord 38.551, 9/7/82; Ord 38.711, 8/20/96)

2 Auction halls.

3 Auto repair shops of all kinds: radiators, paint, glass, brakes, upholstery, and other types, if all operations are conducted wholly within a completely enclosed building.

4 Auto, mobile home, recreational vehicle and truck rental agency.

5 Auto, mobile home, recreational vehicle, truck and boat sales with accessory repairs and services. Said accessory repairs and services shall be conducted wholly within a completely enclosed building.

6 Auto sales, outdoor (new and used cars in operable condition only).

7 Automobile service stations with or without service bays. The entrances to the service bays shall not be open to the street but shall be so designed to face the rear or interior side property line. (Ord 38.662, 1/8/91)

7.1 Billiard center. (Ord 38.688, 3/15/94)

8 Cabinet or carpenter shop if conducted wholly within a completely enclosed building. (Ord 38.637, 8/16/88)

9 Car wash.

9.1 Small and large family day care home, and day care center
(Ord 38.702, 8-15-95)

10 Cocktail lounges with or without live entertainment, excluding
Adult Businesses as defined in Subsection 54.18. (Ord 38.637,
8/16/88; Ord 38.711, 8/20/96)

12 Commercial recreation, not conducted wholly within a building,
such as but not limited to miniature golf, go-cart tracks, batting
range, skateboard park, water slide, swimming pools, etc. (Ord
38.637, 8/16/88)

13 Contractor's yards and offices.

14 Churches.

15 Disinfecting and exterminating business. (Ord 38.637, 8/16/88)

16 Electric and neon sign shops if conducted wholly within a
completely enclosed building. (Ord 38.637, 8/16/88)

17 Food stores, such as supermarkets, convenience stores, etc.
(Ord 38.637, 8/16/88)

18 Funeral homes, morticians.

19 Halls for banquets, etc. (Ord 38.637, 8/16/88)

19.1 Hospital or sanitarium (except pet hospital) (Ord. 38.710,
08/06/96)

20 Liquor stores.

21 Local transportation service facilities (taxi, parcel, service,
ambulance, armored car and van storage).

22 Lumber yards. (Ord 38.637, 8/16/88)

23 Tanning salons. (Ord 38.637, 8/16/88; Ord. 38.694, 10/4/94;
Ord 38.711, 8/20/96)

24 Mini-storage complex with or without caretaker residence. (Ord

38.637, 8/16/88)

25 Motels or hotels, excluding Adult Hotels/Motels, as defined in Subsection 54.18. (Ord 38.711, 8/20/96)

26 Nursery, flower or plants, provided that all incidental equipment and supplies, including fertilizer and empty cans, are kept within a building.

27 Pawnshops.

28 Pet hospitals and veterinarians.

29 Plumbing or sheet metal shop, if conducted wholly within a completely enclosed building.

29.1 Private elementary, middle, or high school (Ord. 38.710 08/06/96)

30 Deleted. (Ord 38.688, 3/15/94)

31 Public services, including electric distributing substations, fire or police station and the like. (Ord 38.637, 8/16/88)

32 Public utility service yard, garages, and substations.

33 Radio or television stations. (Ord 38.637, 8/16/88)

34 Rentals: Tools, trucks, trailers, etc., which include outdoor storage areas. (Ord 38.637, 8/16/88)

35 Residential building, caretakers. [This has been interpreted to mean caretakers residence only; no other residential buildings]

36 Restaurants or restaurants which include on-premise consumption of alcoholic beverages when found clearly incidental to the primary food service or including dancing or live entertainment, excluding Adult Businesses, as defined in Subsection 54.18) (Ord 38.711, 8/20/96)

37 Self-service storage facilities such as mini-storage complex, etc. (Ord 38.637, 8/16/88)

38 Sign painting shop, if conducted wholly within a completely enclosed building. (Ord 38.637, 8/16/88)

39 Temporary tract advertising signs with the exception that no tract sign shall be permitted within six hundred (600) feet of a Santa Clara County Expressway.

39.1 Theater, indoor only, excluding Adult Theaters or Adult Motion Picture Theaters as defined in Subsection 54.18. (Ord. 38.705, 8/15/95)

40 Tire shops.

41 Vehicle oriented window service facility. (Ord 38.511, 5/20/80)

42 Video Sales and Rental Store. (Ord. 38.697; 12/20/94)

19.04 Development Standards

19.04-1 Height

No limitation subject to compliance with all applicable City Codes and Ordinances.

19.04-2 Lot Area

10,000 square feet minimum, except those lots in existence at the time of the adoption of this amendment to the zoning ordinance.

19.04-3 Lot Width, Minimum

100 feet measured at front property line abutting a major street, except those lots in existence at the time of the adoption of this amendment to the zoning ordinance.

19.04-4 Front Yard

None

19.04-5 Rear Yards & Side Yards

Where the rear or side of a Commercial lot abuts a Residential District there shall be a rear yard or a side yard of not less than fifteen (15) feet in depth or width, or both.

19.04-6 Floor Area Ratio

Subject to XI-10-2.38-3.1, the Floor Area Ratio is .50 (50%). (Ord. 38.713, 12-3-96)

19.05 Traffic Hazards

In every case where a parcel is located in a "C2" District that is combined with the special "S" Zoning Area, the Planning Commission shall review and approve, among other factors, the specific location and amount of accessways with regard toward the elimination or reduction of any potential traffic hazards. In addition,

the Commission may require the construction of temporary median barriers where deemed necessary based on ultimate street construction. (Ord 38.637, 8/16/88)

19.06 Off-Street Parking Requirements

There shall be provided off-street parking spaces for automobiles in accordance with the requirements of Section 53. All such parking spaces shall be improved as provided for in Subsection 54.03.

19.07 Standard Conditions

19.07-1 All uses and operations -- except off-street parking and loading, reverse vending machines or mobile recycling units and other uses and activities customarily conducted out of doors -- shall be conducted within a completely enclosed building. (Ord 38.629, 10/27/87)

19.07-2 All storage areas shall be within a completely enclosed building or behind a visually obscure fence a minimum six (6) feet in height.

19.07-3 Such uses, operations and products shall not be objectionable due to odor, dust, smoke, noise, vibration or other similar causes.

19.08 Areas for Collecting and Loading Recyclable Materials

There shall be provided areas for collecting and loading recyclable materials in accordance with the requirements of subsection 54.15 of this Chapter. (Ord. 38.687, 5/19/94)

UPDATE LOG:

(Ord 38.551, 9/7/82 Sec 19.02.6, 19.02.8, 19.02.13, 19.03.1, 19.03.41 Added)

(Ord 38.629, 10/27/87 Sec 19.07.1 Added)

(Ord 38.637, 8/16/88 Sec 19.02.1, 19.02.5, 19.02.12, 19.02.15, 19.02.17, 19.02.20, 19.02.22, 19.02.26, 19.02.28, 19.02.30, 19.02.31, 19.02.32, 19.02.33, 19.02.34, 19.02.35, 19.02.37, 19.03.8, 19.03.10, 19.03.12, 19.03.15, 19.03.16, 19.03.17, 19.03.19, 19.03.22, 19.03.23, 19.03.24, 19.03.31, 19.03.33, 19.03.34, 19.03.37, 19.03.38, and 19.05 Added)

(Ord 38.688, 3/15/94 Sec 19.03.7.1 Added & Sec 19.03.30 Deleted)

(Ord 38.687, 5/19/94 Sec 19.08 Added)

(Ord 38.694, 10/4/94 - Sec 2.26.4 & 2.57.2 Added, Sec 19.02.9, 19.03.23, 21.02.31, & 21.03.12 Amended)

(Ord 38.697, 12/20/94 - Sec 19.03-42 Added & Sec. 19.02-37 Deleted)

(Ord 38.702, 8-15-95 - Sec 19.03-9.1 added & Sec 19.02-12 deleted)

(Ord. 38.705, 8-15-95 - Sec 19.03.39.1 added & Sec 19.02-34 deleted)

(Ord 38.710, 8-6-96 - Sec 19.03.19.1 Added, Sec 19.03.29.1 Added, Sec 19.02.09 Amended, Sec 19.02.18 deleted)

(Ord 38.711, 8-20-96 - Sec 19.02.6 amended, Sec 19.03.1 amended, Sec 19.03.10 amended, Sec 19.03.25 amended, Sec 19.03.36 amended , Sec 19.03.39.1 amended, Sec 19.03.23 amended)

(Ord. 38.713, 12-3-96 - Sec 19.04-6 added)

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Section 20 Repealed

Section 21 "HS" Highway Service District

Section 21 Contents

21.01 Purpose and Intent

21.02 Uses Permitted

21.03 Conditional Uses

21.04 Development Standards

21.05 Off-Street Parking Requirements

21.06 Areas for Collecting and Loading Recyclable Materials

21.07 Standard Conditions

The following regulations shall apply to the "HS" Highway Service District: (Ord 38.76, 8/19/65)

21.01 Purpose and Intent

The "HS" District is intended to provide for the wide range of personal and business services primarily oriented to the automobile customer and transient residential uses such as motels or mobile home parks. It is intended to include those commercial uses which customarily locate outside of the Central Business District area and tend to require lots with well maintained grounds. The Highway Service uses listed are of a relatively low customer volume. Special development standards are incorporated in the district regulations in order to provide for orderly development and to minimize potential traffic hazards. The "HS" District, when appropriate, will be located along State Highways and major City

thoroughfares and in accordance with the adopted City of Milpitas General Plan.
(Ord 38.76, 8/19/76)

21.02 Uses Permitted

The following uses are permitted in the "HS" Districts:

21.02-1 Adult Businesses, subject to the provisions of the Adult Business Ordinance, Title III, Chapter 4 and the provisions of Subsection 54.18. (Ord 38.711, 8/20/96)

1.1 Advertising signs and advertising structures subject to compliance with provisions of the adopted City of Milpitas Sign Ordinance.

2 Auto and truck rental agency.

3 Auto, truck and boat sales with accessory repairs and services.

4 Auto sales, outdoor (new and used cars in operable condition only).

5 Appliance repair.

5(a) Banks and similar financial institutions. (Ord 38.202, 5/5/70)

6 Blueprint and photocopying plants.

6.1 Bowling Alley. (Ord 38.551, 9/7/82)

7 Business or language schools, correspondence school.

8 Canvas and metal awning shops.

9 Commercial art studios.

9.1 Commercial athletic facilities, conducted wholly within a building, such as but not limited to health spas and gyms, tennis, handball or racquetball, etc. (Ord 38.551, 9/7/82)

10 Commercial laboratories, analytical chemists.

11 Dancing school.

12 Diaper service.

13 Disinfecting and exterminating services.

14 Driving schools.

14.1 Eating establishments not serving alcoholic beverages. (Ord 38.123, 5/7/68)

15 Electric and neon sign shops.

16 Fire house.

17 Food storage lockers.

18 Fraternal or Union Halls and Offices.

19 Furniture store.

20 Deleted (Ord 38.551, 9/7/82)

21 House trailer sales and rentals.

22 Janitorial services and window cleaning services.

23 Landscape contractors and nurseries.

24 Laundries and dry cleaning plants.

25 Deleted (Ord 38.591, 11/5/85)

26 Newspaper printing.

26.1 Deleted. (Ord 38.688, 3/15/94)

27 Print shop.

28 Radio station.

29 Rentals: cars, trucks, trailers, tools and equipment, sickroom supplies, costumes, etc.

30 Repairs, rental and distribution of office or business equipment.

31 Sauna and steam baths. (Ord. 38.694, 10/4/94)

- 32 Second-hand or thrift stores
- 33 Self-service laundries and dry cleaning establishment.
- 34 Sign painters shop, also electronic and neon sign shop.
- 35 Topographers and typesetting shop.
- 36 Trading stamps and redemption store.
- 37 Used car lot.
- 38 Venetian blind shop.
- 39 Other uses similar to the above as provided for in Subsection 54.02.

21.03 Conditional Uses

Uses permitted subject to securing a Conditional Use Permit as provided for in Section 57.

21.03-

1 Automobile service stations with or without service bays. The entrances to the service bays shall not be open to the street but shall be so designed to face the rear or interior side property line. (Ord 38.662, 1/8/91)

1.1 Arcades, with mechanical or electronic games or games of skill or science, excluding Adult Arcades, as defined in Subsection 54.18) (Ord 38.551, 9/7/82, Ord 38.711, 8/20/96)

2 Auction halls.

3 Auto repair shops of all kinds: shops for tires, radiators, paint, body, glass, brakes, upholstery, and other types.

3.1 Billiard center. (Ord 38.688, 3/15/94)

4 Building contractors -- yards and offices.

5 Cabinet makers shop.

5.1 Small and large family day care home, and day care center (Ord 38.702, 8-15-95)

6 Car wash.

6.1 Churches. (Ord 38.195, 1/6/70)

6.2 Commercial fueling facility. (Ord 38.654, 3/20/90)

7 Commercial recreation, not conducted wholly within a building, such as but not limited to miniature golf, go-cart tracks, batting range, skateboard park, water slide, etc. (Ord 38.551, 9/7/82)

8 Craft shop.

9 Drive-in restaurant.

10 Eating or drinking establishments serving alcoholic beverages or providing dancing or live entertainment, excluding Adult Businesses as defined in Subsection 54.18. (Ord 38.123, 5/7/68, Ord 38.711, 8/20/96)

11 Funeral homes, morticians.

12 Massage Establishment. (Ord. 38.694, 10/4/94)

13 Local transportation service facilities (taxi, parcel service, ambulance, armored car and van storage).

14 Motels and hotels, excluding Adult Hotels/Motels as defined in Subsection 54.18. (Ord 38.591, 11/5/8, Ord 38.711, 8/20/96)

15 Pet hospitals and veterinarians.

16 Deleted (Ord 38.551, 9/7/82)

17 Public utility service yard, garages, and substations.

18 Retail building material and lumber yard.

19 Residential buildings.

19.1 Shooting range, indoor. (Ord 38.551, 9/7/82)

20 Temporary tract signs with the exception that no tract signs shall be permitted within six hundred (600) feet of a Santa Clara County Expressway. (Ord 38.207, 11/17/70)

20.1 Theater, outdoor, drive-in. (Ord 38.551, 9/7/82)

21 Vehicle oriented window service facility. (Ord 38.395, 9/20/77)

21.04 Development Standards (Ord 38.185, 8/5/69)

21.04-1 Height of structures

No limitation subject to compliance with all applicable City Codes and Ordinances. This Section does not include freestanding sign heights which are regulated by Ordinance No. 124, Sign Ordinance, enacted as Chapter 30, Title XI of the Milpitas Municipal Code. (Ord 38.185, 8/5/69)

21.04-2 Lot Area

- a. Those lots having frontage on a major street (four or more moving traffic lanes) shall have a lot area no less than one and one-half (1-1/2) acres.
- b. Those lots having frontage on a non-major street (two moving traffic lanes) shall have a lot area no less than twenty thousand (20,000) square feet.
- c. The following specific land uses may locate on parcels no less than ten thousand (10,000) square feet regardless of street frontage:
 - 1) Auto service (Gas) stations.
 - 2) Eating and Drink Establishments, including Drive-In Restaurants.

21.04-3 Minimum Lot Width

- a. Those lots having frontage on a major street (four or more moving traffic lanes) shall have a lot width of no less than two hundred fifty (250) feet measured at front property line abutting the major street.
- b. Those lots having frontage on a non-major street (two moving traffic lanes) shall have a lot width of no less than one hundred and twenty-five (125) feet.
- c. Those specific land uses allowed to locate on parcels on less than ten thousand (10,000) square feet in an area shall have a lot (or parcel) width of no less

than one hundred (100) feet.

21.04-4 Front Yard

There shall be no front yard except that those parcels which have frontage on major (four moving lanes or more) streets shall be required to have a fifty (50) foot front yard. Twenty- five (25%) percent of the required front yard shall be landscaped.

21.04-5 Rear Yards & Side Yards

a. Deleted (Ord 38.473, 3/6/79)

b. Where the rear or side of a Commercial lot abuts a Residential District, there shall be a rear yard or a side yard of not less than fifteen (15) feet in depth or width, or both.

21.04-5.1 Floor Area Ratio

Subject to XI-10-2.38-3.1, the Floor Area Ratio is .50 (50%). (Ord. 38.713, 12-3-96)

21.04-6 Traffic Hazards

In every case where a parcel is located in a "HS" District that is combined with the special "S" Zoning Area, the Planning Commission shall review and approve, among other factors, the specific location and amount of accessways with regard toward the elimination or reduction of any potential traffic hazards. In addition, the Commission may require the construction of temporary median barriers where deemed necessary based on ultimate street construction. (Ord 38.637, 8/16/88)

21.05 Off-Street Parking Requirements

There shall be provided off-street parking spaces for automobiles in accordance with the requirements of Section 53. All such parking spaces shall be improved as provided for in Subsection 54.03. (Ord 38.384, 10/26/76)

21.05-1 through 21.05-7, Deleted (Ord. 38.384, 10/26/76)

21.06 Areas for Collecting and Loading Recyclable Materials

There shall be provided areas for collecting and loading recyclable materials in accordance with the requirements of subsection 54.15 of this Chapter. (Ord. 38.687, 5/19/94)

21.07 Standard Conditions

21.07-1 All uses and operations -- except off-street parking and loading, reverse vending machines or mobile recycling units and

other uses and activities customarily conducted out of doors -- shall be conducted within a completely enclosed building. (Ord 38.629, 10/27/87)

21.07-2 All storage areas shall be within a completely enclosed building or behind a visually obscure fence a minimum six (6) feet in height.

UPDATE LOG:

(Ord 38.123, 5/7/68 Sec 21.02-1.14.1, 21.03-10 Added)
(Ord 38.185, 8/5/69 Sec 21.04 in its entirety, Added)
(Ord 38.195, 1/6/70 Sec 21.03-6.1 Added)
(Ord 38.202, 5/5/70 Sec 21.02-1.5a Added)
(Ord 38.207, 11/17/70 Sec 21.03-20 Added)
(Ord 38.384, 10/26/76 Sec 21.05 Amended; 21.05-1 thru 21.05-7, & 21.06 Deleted)
(Ord 38.395, 9/20/77 Sec 21.03-21 Added)
(Ord 38.473, 3/6/79 Sec 21.04-5a Deleted)
(Ord 38.551, 9/7/82 Sec 21.02-1.6.1, 21.02-1.9.1, 21.03-1.1, 21.03-7, 21.03-19.1, 21.03-20 Added; 21.02-1.20, 21.02-1.25, 21.03-16 Deleted)
(Ord 38.591, 11/5/85 Sec 21.03-14 Added)
(Ord 38.637, 8/16/88 Sec 21.04-6 Added)
(Ord 38.654, 3/20/90 Sec 21.03-6.2 Added)
(Ord 38.662, 1/8/91 Sec 21.03-1 Added)
(Ord 38.688, 3/15/94 Sec 21.03-3.1 Added; 21.02-1.26.1 Deleted)
(Ord 38.687, 5/19/94 Sec 21.06 Added)
(Ord 38.694, 10/4/94 - Sec. 21.03.12 & 21.02.31 Amended).
(Ord 38.702 8-15-95 - Sec 21.03-5.1 added)
(Ord 38.711 8/20/96 Sec 21.02.1 added & renumbered, Sec 21.03.1.1 amended, Sec 21.03.10 amended, Sec 21.03.14 amended)
(Ord. 38.713, 12-3-96 - Sec 21.04-5.1 added)

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Section 22 "TC" Town Center District

Section 22 Contents

- 22.01 Purpose and Intent
- 22.02 Principal Permitted Uses
- 22.03 Accessory Uses
- 22.04 Conditional Uses
- 22.05 Development Standards
- 22.06 Areas for Collecting and Loading Recyclable Materials
- 22.07 Deleted

The following regulations shall apply to the "TC" Town Center District.

22.01 Purpose and Intent

To provide for the orderly development of the Town Center District for the City in the general area designated for such District by the adopted Milpitas General Plan.

22.01-1 The Town Center shall be considered as the chief administrative, business, entertainment, and cultural center of the town as a whole. It is a meeting place for the population, a market place, home of commercial and professional firms, the entertainment area with theater, cinema, concert hall, museum, art gallery, library; the place for restaurants, hotels, cafes, and all the miscellaneous halls known as places of public assembly. It includes churches, municipal offices, the City Hall, Council Chambers and department stores. It is the focal place; and the focus of a traffic circulation system.

22.01-2 These various functions can be grouped and take on innumerable shapes, but must retain cohesiveness and a shape convenient for access and communication between groups. The Town Center District consists of two distinct sub-areas: the eastern portion, located between I-680 and N. Hillview Drive; and the western portion located between N. Hillview Drive westerly to the railroad tracks. The development concept for the Town Center is to have predominantly office and highway serving uses (hotels, restaurants, etc.) in the East Area, and predominantly retail and entertainment uses in the Western Area. This separation of the Town Center into distinct sub-areas allows for a great variety uses within the "Town Center" District and yet, through their separateness, ensures that they will reinforce rather than negatively affect each other.

22.01-3 Inasmuch as the close proximity of high to very high density residential to areas of relatively intensive commercial and cultural activities can provide mutual benefits to both land use types, it is intended that consideration be given to including residential developments of up to forty (40) units per acre on portions of the Town Center found to be appropriate for such use.

22.02 Principal Permitted Uses

The following is a list of permitted uses within the Town Center District. At the end of each permitted use is a symbol (i.e.: WA) which defines the sub-area that particular permitted use would be allowed. Wherever a symbol is not indicated, that permitted use has been purposely omitted and not allowed in that sub-area. Any use not listed as a permitted use shall be a Conditional Use.

Each district sub-area within the Town Center shall allow the following principal permitted uses (Note: Location of each sub-area of permitted uses: EA = East

Area, WA = West Area):

- 22.02-1 Art or Antique Store, not including Thrift Store. (WA)
- 22.02-2 Artist's Supply Store. (WA)
- 22.02-3 Bakery Goods Store. (WA)
- 22.02-4 Banks or Similar Financial Institutions. (EA, WA) (Ord. 38.693, 9/20/94)
- 22.02-5 Barber Shop or Beauty Salon. (WA)
- 22.02-6 Book Store (Except Adult Book Store). (WA)
- 22.02-7 Candy or Confectionery Store. (WA)
- 22.02-8 Clothing Stores (WA)
- 22.02-9 Department Store . (WA)
- 22.02-10 Drug Store. (WA)
- 22.02-11 Dry Cleaners Store. (WA)
- 22.02-12 Florist Store. (WA)
- 22.02-13 Furniture Store. (WA)
- 22.02-14 Hardware Store. (WA)
- 22.02-15 Hobby Shop. (WA)
- 22.02-16 Household Repair Shop. (WA)
- 22.02-17 Jewelry Store. (WA)
- 22.02-18 Leather Goods or Luggage Store. (WA)
- 22.02-19 Locksmith Shop. (WA)
- 22.02-20 Millinery Shop. (WA)
- 22.02-21 Music Store. (WA)

- 22.02-22 Offices: Business or Professional. (EA, WA)
- 22.02-23 Optician or Optometrist Store or Office. (EA, WA)
- 22.02-24 Photography Supply Store. (WA)
- 22.02-25 Picture Framing Shop. (WA)
- 22.02-26 Real Estates Office. (EA, WA)
- 22.02-27 Tailor or Dressmaking Store. (WA)
- 22.02-28 Shoe Store. (WA)
- 22.02-29 Shoe Repair Shop. (WA)
- 22.02-30 Sporting Goods Store. (WA)
- 22.02-31 Stamp or Coin Store. (WA)
- 22.02-32 Stationery Store. (WA)
- 22.02-33 Toy Store. (WA)
- 22.02-34 Travel Agency or Office. (EA, WA)

22.03 Accessory Uses

The following are the accessory uses permitted in all sub-areas of the "TC" District:

- 22.03-1 Signs appurtenant to any use in this District are regulated by Ordinance No. 124, Sign Ordinance, enacted as Chapter 30. Title XI of the Milpitas Municipal Code.
- 22.03-2 Deleted (Ord. 38.693, 9/20/94)

22.04 Conditional Uses

The following are conditional uses in the Town Center District and may be applied for in any of the sub-areas provided that it meets the purpose and intent of the Town Center District.

- 22.04-1 Alcoholic Beverage Sales, both on-site consumption or off-site sales.

22.04-2 Automatic Teller Machines (ATM's) or other type walk-up window facility.

22.04-2.1 Billiard center. (Ord 38.688, 3/15/94)

22.04-3 Bus Terminal, Cab Stand, or other Transit Facilities.

22.04-3.1 Small and large family day care home, and day care center (Ord 38.702, 8-15- 95)

22.04-4 Hotel or Motel, excluding Adult Businesses, as defined in Subsection 54.18. (Ord 38.711, 8/20/96)

22.04-5 Mailbox Rentals.

22.04-6 Public and quasi-public uses appropriate to or customarily located in the "TC" District and intended to serve the whole City and/or region. "Quasi-public use" shall mean a use operated by a private non-profit educational, religious, recreational, charitable, or medical institution: such use have the purpose primarily of serving the general public and including uses such as churches, private schools, community, youth and senior citizen recreational facilities, private hospitals, Government facilities, and the like.

22.04-7 Residential developments of up to forty (40) units per acre provided that the Commission makes a finding that the location of such a use is appropriate and in conformance with the purpose and intent of the Town Center District specified in Section 22.01 above.

22.04-8 Storage Garages and Off-Street Parking Facility.

22.04-9 Theater, restaurant, bar, night club or other major entertainment facility, intended and designed to serve the City as a whole, excluding Adult Businesses, as defined in Subsection 54.18. (Ord 38.711, 8/20/96)

22.04-9.1 Vehicle Oriented Window Service. (Ord. 38.693, 9/20/94)

22.04-10 Video Rental Store.

22.04-11 Any other retail business or service establishment, excluding Adult Businesses, as defined in Subsection 54.18, that the Commission finds not to be inconsistent with the purpose of this Article and will not impair the present or potential use of adjacent properties. (Ord 38.711, 8/20/96)

22.05 Development Standards

22.05-1 Height Regulations:

There shall be no specific height limitation in the Town Center District; provided, however, that before the construction of any structure which exceeds thirty-five (35) feet in height shall be authorized, the Commission must make a finding that any such excess height will not be detrimental to the light, air, or privacy of any other structure or use currently existing or anticipated. This section does not include freestanding sign heights which are regulated by Ordinance No. 124 (Sign Ordinance), enacted as Chapter 30, Title XI of the Milpitas Municipal Code.

22.05-2 Front Yard:

Twenty (20) feet, except those area which have frontage on E. Calaveras Blvd. which shall be thirty-five (35) feet.

22.05-3 Side & Rear Yards:

None, except where the side or rear yard abuts a Residential District there shall be a side or rear yard not less than fifteen (15) feet in depth or width; or except for the street side of a corner lot in which case shall be the same as the front yard. (Ord. 38.693, 9/20/94)

22.05-3.1 Floor Area Ratio

Subject to XI-10-2.38-3.1, the Floor Area Ratio is .85 (85%). (Ord. 38.713, 12-3-96)

22.05-4 Off-Street Parking Requirements:

There shall be provided off-street parking for automobiles in accordance with the requirements of Section 53 of this Chapter. All such parking spaces shall be improved as provided for in Subsection 54.03 of this Chapter.

22.05-5 Areas of Lot to be Landscaped:

- a. Required front yard areas. This may be adjusted, by the Planning Commission, if it is found that there has been provided adequate landscaping adjacent to the building(s) to compensate for a reduction.
- b. Required side and rear yard areas.
- c. The ends of each parking aisle shall include landscaped areas. The size of these planters shall be determined by the Planning Commission at the time of Site and Architectural review.

22.05-6 Outdoor Storage:

Outdoor storage shall be permitted only when said storage areas are

suitably screened, and shall not be located within any front or street side setback or yard.

22.05-7 Outdoor Activities: All uses, operations and sales, except off-street parking and loading, reverse vending machines or mobile recycling units, restaurant seating, and other uses and activities customarily conducted out of doors as determined by the Planning Commission, shall be conducted within a completely enclosed building.

22.06 Areas for Collecting and Loading Recyclable Materials

There shall be provided areas for collecting and loading recyclable materials in accordance with the requirements of subsection 54.15 of this Chapter. (Ord. 38.687, 5/19/94) (Ord 38.682, 9/21/93)

22.07 Deleted (Ord 38.682, 9/21/93)

22.07-1 Deleted (Ord 38.682, 9/21/93)

UPDATE LOG:

(Ord. 38.674, 11/3/92 - Adopted in its entirety)
(Ord. 38.682, 9/21/93 - Deleted Sec 22.06, 22.07, & 22.07-1)
(Ord .38.688, 3/15/94 - Added Sec 22.04-2.1)
(Ord. 38.687, 5/19/94 - Added Sec 22.06)
(Ord. 38.693, 9/20/94 - Added Sec 22.04-9.1, Amended Sec 22.02-4 & Sec 22.05-3, Deleted Sec 22.03-2)
(Ord. 38.702, 8-15-95 - Added Sec 22.04-3.1)
(Ord 38.711, 8/20/96- Amended Sec 22.04.4, Amended Sec 22.04.9, Amended Sec 22.04.11)
(Ord. 38.713, 12-3-96 - Added Sec 22.05-3.1)

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Section 30 "M1" Light Industrial District

Section 30 Contents

- 30.01 Purpose and Intent
- 30.02 Principal Permitted Uses
- 30.03 Conditional Uses
- 30.04 Off-Street Parking Requirements

XI-10-30.01 Purpose and Intent

The M1 Light Industrial District is reserved for the construction, use and occupancy of buildings and facilities for office, research, limited and light manufacturing, and other uses compatible with the district.

XI-10-30.02 Principal Permitted Uses

The following principal uses are permitted in the M1 District:

- 30.02-1 Adult Businesses, subject to the provisions of the Adult Business Ordinance, Title III, Chapter 4 and to the provisions of Subsection 54.18. (Ord 38.711, 8/20/96)
- 30.02-1.1 Administrative, professional or research offices and uses when found necessary to serve and appropriate to the Industrial area.
- 30.02-2 Bottling plants.
- 30.02-3 Distribution plants.
- 30.02-4 Plants and facilities for the research and development, assembly, packaging, processing, repairing or treatment of equipment, materials, merchandise or products.
- 30.02-5 Plumbing, sheet metal or woodworking shops.
- 30.02-6 Pottery or tile manufacturing or other similar ceramic products.
- 30.02-7 Public Utility buildings.
- 30.02-8 Veterinary clinic, hospital or kennel.
- 30.02-9 Wholesale business, storage building and warehouse.
- 30.02-10 Other uses similar to the above as provided for in Subsection XI-10-54.02.

XI-10-30.03 Conditional Uses

- 30.03-1 Automobile service stations with or without service bays. Entrances to the service bays shall not be open to the street but shall be so designed to face the rear or interior side property line. (Ord 38.662, 1/8/91)
- 30.03-2 Auto repair shops of all types.
- 30.03-2.1 Billiard center. (Ord 38.688, 3/15/94)
- 30.03-3 Caretakers residence.

- 30.03-3.1 Churches.
- 30.03-4 Commercial athletic facilities and health spas; such as but not limited to tennis, handball, racquetball, etc.
- 30.03-4.1 Commercial fueling facility. (Ord 38.654,)
- 30.03-5 Eating or drinking establishments including those serving alcoholic beverages or providing dancing or live entertainment when found necessary to serve and appropriate to the industrial area, excluding Adult Businesses, as defined in Subsection 54.18. (Ord 38.711, 8/20/96)
- 30.03-6 Financial institution, such as banks and savings and loan associations.
- 30.03-7 Mini-storage.
- 30.03-8 Motels/Hotels, excluding Adult Businesses, as defined in Subsection 54.18. (Ord 38.711, 8/20/96)
- 30.03-8.1 Motor vehicle or boat rental agency or yards; motor vehicle and boat sales including indoor only accessory repairs and services; outdoor motor vehicle or boat sales (new and used vehicles in operable condition only). (Ord 38.590, 10/1/85)
- 30.03-9 Printing and stationary stores necessary to serve the industrial area.
- 30.03-9.1 Recyclable processing facility. (Ord 38.629, 10/27/87)
- 30.03-10 Retail commercial uses necessary to serve and appropriate to the light industrial area.
- 30.03-11 Temporary tract advertising signs.
- 30.03-12 Vehicle oriented window service . (Ord 38.395, 9/20/77)

XI-10-30.04 Off-Street Parking Requirements

There shall be provided off-street parking for automobiles in accordance with the requirements of Section XI-10-53. All such parking spaces shall be improved as provided for in Subsection XI-10-54.03.

XI-10-30.05 Development Standards

- 30.05-1 Height
There shall be no specific limitations in the M1 District provided, however, that before the construction of any structure which exceeds three (3) stories or thirty-five (35) feet in height shall be authorized, the Commission must make a finding that any such excess height will not be detrimental to the light, air, or privacy of any other structure or use currently existing or anticipate.
- 30.05-2 Lot Area
Individual sites shall be of such size that all space requirements provided in this Section are satisfied.
- a. Lot Width - None
 - b. Front Yard
For those lots having frontage on a major street, thirty-five (35) feet from face of curb.
For those lots having frontage on a non-major street, twenty-five (25) feet from face-of-curb.
 - c. Rear Yard - None
 - d. Side yards - None, except for street side of corner lots which shall be the same as the front yard.
- 30.05-2.1 Floor Area Ratio
Subject to XI-10-2.38-2, the Floor Area Ratio is .40 (40%). (Ord. 38.713, 12-3-96)
- 30.05-3 Areas of Lot Required to be Landscaped
Landscaped areas shall mean any area planted with plant material (trees, shrubs, ground cover, etc.). Landscape areas shall be exclusive of parking and vehicular traffic area (direct driveways excepted) and this shall be shown on the Site Plan in detail for Planning Commission approval.
- a. Required front yard area.
 - b. Required street side yard area.
This may be adjusted, by the Planning Commission, if it is found that there has been provided adequate landscaping adjacent to the building(s) to compensate for a reduction.

- 30.05-4 **Fences, Hedges and Walls**
All planting, fencing and walls for new development, including but not restricted to fences and walls along rear and interior side property lines, shall be approved by the Planning Commission. Modifications regarding landscaping, fencing and walls at existing developed sites shall be subject to the provisions of Section 42.10 of this Chapter. (Ord. 38.716, 9/15/98)
- 30.05-5 **Utilities**
All wires, pipes, cables and utility connections shall be placed in underground or subsurface conduits. All above ground transformers and vaults for new development shall be adequately screened to the approval of the Planning Commission. Modifications regarding subsurface conduits or above ground transformers and vaults at existing developed sites shall be subject to the provisions of Section 42.10 of this Chapter. (Ord. 38.716, 9/15/98)
- 30.05-6 **Abutting any "R" District**
Where any M District abuts any R District, there shall be provided one hundred (100) feet between any M Building and any R District.
(Applicants are advised that mitigating improvements may be needed to eliminate any adverse impacts from the residences and that additional requirements may be imposed on the developer to remedy this situation.) *City Council minutes, May 4, 1982*
- 30.05-7 **Outdoor Storage**
Outdoor storage shall be permitted only when said storage areas are suitably screened and are located at least one hundred (100) feet from any R District and not within any required front or street side yard. Said location and screening of outdoor storage areas shall be to the approval of the Planning Commission. Modifications regarding outdoor storage at existing developed sites shall be subject to the provisions of Section 42.10 of this Chapter. (Ord. 38.716, 9/15/98)
- 30.05-8 **Areas for Collecting and Loading Recyclable Materials**
There shall be provided areas for collecting and loading recyclable materials in accordance with the requirements of Subsection 54.15 of this Chapter. (Ord. 38.687, 5/19/94)

Note

54.13 The provisions amending Sections XI-10-30, XI-10-31 and XI-10-35 of this Chapter, related to development standards, shall not apply to any existing improvements (buildings, landscaping, fencing or parking) lawful at the time of installation or improvements which have been approved by the Planning Commission and for which a building permit issued prior to June 17, 1982, and installed in conformance with said approval and permit.

UPDATE LOG:

(Ord 38.547, 5/18/82 -- This Section was amended in its entirety. Subsequent amendments will be shown on the appropriate subsections.)

(Ord 38.688, 3/15/94 - Added section 30.03-2.1)

(Ord 38.687, 5/19/94 - Sec 30.05-8 Added)

(Ord 38.711, 8/20/96 Sec 30.02.1.1 Added, Sec 30.03-5 Amended, Sec 30.03-8 Amended)

(Ord. 38.713, 12-3-96 Sec 30.05-2.1 Added)

(Ord. 38.716, 9-15-98 Sec 30.05-4, 30.05-5, 30.05-7 all amended)

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Section 31 "M2" Heavy Industrial District

Section 31 Contents

- 31.01 Purpose and Intent
- 31.02 Principal Permitted Uses
- 31.03 Conditional Uses
- 31.04 Off-Street Parking Requirements
- 31.05 Development Standards

XI-10-31.01 Purpose and Intent

The M2 Heavy Industrial District is reserved for the construction, use and occupancy of buildings and facilities for office, research, general manufacturing, warehousing and distribution and other uses compatible with the district.

XI-10-31.02 Principal Permitted Uses

The following uses are permitted in this District:

- 31.02-1 Any use listed as a permitted use in the M1 District.

- 31.02-1.1 Adult Businesses, subject to the provisions of the Adult Business Ordinance, Title III, Chapter 4, and the provisions of Subsection 54.18. (Ord 38.711, 8/20/96)
- 31.02-2 Automobile assembly plants.
- 31.02-3 Automobile repair shops of all types.
- 31.02-4 Draying, freighting or trucking yard or terminal when wholly conducted within an area enclosed on all sides with a solid wall or fence (e.g., chain link with slats) not less than eight (8) feet in height.
- 31.02-5 Deleted by Ordinance 38.745. (04/20/99)
- 31.02-6 Plant and facilities for the research and development, assembly, compounding, manufacture, packaging, processing, distribution, warehousing, repairing or treatment of equipment, materials, merchandise or products.
- 31.02-7 Public Utility buildings and service facilities, electric transmission and distribution substations, and public utility service centers.
- 31.02-8 Other uses similar to the above as provided for in Subsection XI-10-54.02.

XI-10-31.03 Conditional Uses

- 31.03-1 Automobile service stations with or without service bays. The entrances to the service bays shall not be open to the street but shall be so designed to face the rear or interior side property line. (Ord 38.662, 1/8/91)
- 31.03-2 Auto dismantler or recycler, junk, salvage, scrap metal or hazardous waste material storage yards when conducted within an area enclosed on all sides with a solid wall or fence (e.g., chain link with slats) not less than eight (8) feet in height.
- 31.03-2.1 Billiard center. (Ord 38.688, 3/15/94)
- 31.03-3 Building material sales, rental and storage yard, including the sale or rock, sand, gravel and the like when conducted wholly within a completely enclosed building or within an area enclosed on all sides with a solid wall or fence (e.g., chain link with slats) not less than eight (8) feet in height.
- 31.03-4 Caretaker's residence.
- 31.03-4.1 Churches.

- 31.03-5 Commercial athletic facilities and health spas; such as but not limited to tennis, handball, racquetball, etc.
- 31.03-5.1 Commercial fueling facility. (Ord 38.654, 3/20/90)
- 31.03-6 Construction or contractor's yard and offices when wholly conducted within an area enclosed on all sides with a solid wall or fence (e.g., chain link with slats) not less than eight (8) feet in height.
- 31.03-7 Eating or drinking establishments including those serving alcoholic beverages or providing dancing or live entertainment when found necessary to serve and appropriate to the industrial area, excluding Adult Businesses, as defined in Subsection 54.18. (Ord 38.711, 8/20/96)
- 31.03-8 Financial institution, such as banks and savings and loan associations.
- 31.03-8.5 Mini Storage. (Ord 38.745, 04/20/99)
- 31.03-9 Motels/Hotels, excluding Adult Businesses, as defined in Subsection 54.18. (Ord 38.711, 8/20/96)
- 31.03-9.1 Motor vehicle or boat rental agency or yards; motor vehicle and boat sales including indoor only accessory repairs and services; outdoor motor vehicle or boat sales (new and used vehicles in operable condition only). (Ord 38.590, 10/1/85)
- 31.03-10 Printing and stationary stores necessary to serve the industrial area.
- 31.03-10.1 Recyclable processing facility. (Ord 38.629,)
- 31.03-11 Retail commercial uses necessary to serve and appropriate to the industrial area.
- 31.03-12 Temporary tract advertising signs.
- 31.03-13 Vehicle oriented window service . (Ord 38.395, 9/20/77)

XI-1031.04 Off-Street Parking Requirements

There shall be provided off-street parking for automobiles in accordance with the requirements of Section XI-10-53. All such parking spaces shall be improved as provided for in Subsection XI-10-54.03.

XI-10-31.05 Development Standards

Height, Area, Lot Width, Front, Side & Rear Yard, Floor Area Ratio, Etc.:

Same as required in the "M1" District. (Section XI-10-30.05)

UPDATE LOG:

(Ord 38.547, 5/18/82 -- This Section was amended in its entirety. Subsequent amendments will be shown on the appropriate subsection)

(Ord 38.688, 3/15/94 - Added section 31.03-2.1)

(Ord 38.711, 8/20/96 Sec 31.02.1.1 added, Sec 31.03.7 and 31.03.9 Amended)

(Ord 38.713, 12-3-96 Sec 31.05 Amended re Floor Area Ratio)

(Ord. 38.745, 4/20/99 Sec 31.02 and 31.03 Amended re mini-storage)

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Section 35 "MP" Industrial Park District

Section 35 Contents

- 35.01 Purpose and Intent
- 35.02 Principal Permitted Uses
- 35.03 Accessory Uses
- 35.04 Conditional Uses
- 35.05 Development Standards
- 35.06 Off-Street Parking Requirements
- 35.07 Utilities
- 35.08 Abutting any "R" District
- 35.09 Outdoor Storage
- 35.10 General Standards - All Uses
- 35.11 Areas for Collecting and Loading Recyclable Materials

XI-10-35.01 Purpose and Intent

The MP district is intended to accommodate, in a park like setting, a limited group of research, professional, packaging and distribution facilities and uses which may have unusual requirements for space, light, and air, and the operation of which are clean and quiet and which meet the standards set herein.
(Ord. 38 (part), 3/15/55)

XI-10-35.02 Principal Permitted Uses

The following principal uses are permitted in MP Districts:

- 35.02-1 Assembling, packaging, or distribution from previously prepared materials, such as cloth, plastic, paper, leather, precious or semi-precious metals or stones, electric or electronic instruments and devices such as television, radios, phonographs and pharmaceutical products.

| | |
|---------|--|
| 35.02-2 | Chemical and physical science offices and laboratories. |
| 35.02-3 | Distribution and storage facilities. |
| 35.02-4 | Financial institution and offices |
| 35.02-5 | Laboratories - experimental, film or testing. |
| 35.02-6 | Medical or research laboratories, and offices. |
| 35.02-7 | Professional offices. |
| 35.02-8 | Public utility buildings and substations. |
| 35.02-9 | Any other research, packaging, distribution, or professional use determined by the Planning Commission to be of the same general character as the above permitted uses and not in conflict with the Purpose and Intent section of this District as provided for in subsection XI-10-54.02. (Ord. 38 (part), 3/15/55) |

XI-10-35.03 Accessory Uses

The following uses are permitted in MP Districts:

| | |
|---------|--|
| 35.03-1 | Incidental services, such as restaurants and recreation facilities for employee use only, and when conducted in and entered from within the building group. (Ord. 38 part), 3/15/55) |
|---------|--|

XI-10-35.04 Conditional Uses

Uses permitted subject to securing a conditional use permit as provided for in Section XI-10-57.00:

| | |
|-----------|--|
| 35.04-1 | Automobile dealerships selling new and used automobiles (excluding any boat or camper sales) with said dealership uses only taking place on parcels of three (3) acres or greater in area and including rentals and repair services only when incidental to the new automobile sales. (Ord 38.641, 10/11/88) |
| 35.04-2 | Automobile service stations with or without service bays. Entrances to the service bays shall not be open to the street but shall be so designed to face the rear or interior side property line. (Ord 38.662, 1/8/91) |
| 35.04-2.1 | Billiard center. (Ord 38.688, 3/15/94) |

| | |
|-----------|---|
| 35.04-2.2 | Car washes in conjunction with automobile service stations only. (Ord. 38.700, 6/20/95) |
| 35.04-3 | Deleted (Ord 38.702, 8-15-95) |
| 35.04-4 | Churches. |
| 35.04-5 | Commercial athletic facilities and health spas; such as tennis, handball, racquetball, etc. |
| 35.04-5.1 | Halls for Banquets, etc.; provided that the portion of any such facility actually used for banquets, etc. as opposed to being used for parking, is located not closer than five hundred (500) feet from any residentially zoned district or any area designated on the General Plan as being residential. (Ord 38.649, 12/5/89) |
| 35.04-6 | Motels and hotels (with or without restaurant and cocktail facilities which are designed to accommodate the guests and made an integral part of said motel or hotel), excluding Adult Businesses or Adult Motels/Hotels, as defined in Subsection 54.18. (Ord 38.711, 8/20/96) |
| 35.04-7 | Printing or stationary stores when found necessary to serve that industrial area. |
| 35.04-8 | Public and quasi-public uses. |
| 35.04-9 | Restaurant or restaurants which includes the on-premise consumption of alcoholic beverages, when found clearly incidental to the primary food service. (Ord. 38.677, 1/5/93) |
| 35.04-10 | Temporary tract advertising signs. |
| 35.04-11 | Vehicle oriented window service . |

XI-10-35.05 Development Standards

| | |
|---------|--|
| 35.05-1 | Lot Area Individual sites shall be of such size that all space requirements provided in this Section are satisfied. |
| 35.05-2 | Lot Width One hundred (100) feet. |
| 35.05-3 | Front Yard Thirty-five (35) feet. |

- 35.05-4 Rear Yard
Twenty (20) feet
- 35.05-5 Side Yards
Interior, ten (10) feet (corner lots, same as front yards).
- 35.05-5.1 Floor Area Ratio
Subject to XI-10-2.38.2, the Floor Area Ratio is .50 (50%). (Ord. 38.713, 12-3-96)
- 35.05-6 Structure Height
There shall be no specific limitation in the MP District; provided, however, that before the construction of any structure which exceeds three (3) stories or thirty-five (35) feet in height shall be authorized, the Commission must make a finding that any such excess height will not be detrimental to the light, air, or privacy of any other structure or use currently existing or anticipated.
- 35.05-7 Areas of Lot Required to be Landscaped
Landscaped areas shall mean any area planted with plant material (trees, shrubs, ground cover, etc.). Landscape areas shall be exclusive of parking and vehicular traffic area (direct driveways excepted) and this shall be shown on the Site Plan, in detail, for Planning Commission approval.
a. Required front yard area.
b. Required street side yard area.
 This may be adjusted, by the Planning Commission, if it is found
 that there has been provided adequate landscaping adjacent to the
 building(s) to compensate for a reduction.
- 35.05-8 Fences, Hedges and Walls
All planting, fencing and walls for new development, including but not restricted to fences and walls along rear and interior side property lines, shall be approved by the Planning Commission. Modifications regarding landscaping, fences, hedges and walls at existing developed sites shall be subject to the provisions of Section 42.10 of this Chapter. (Ord. 38.716, 9/15/98)

XI-10-35.06 Off-Street Parking Requirements

There shall be provided off-street parking for automobiles in accordance with the requirements of Section XI-10-53. All such parking spaces shall be improved as provided for in Subsection XI-10-54.03.

XI-10-35.07 Utilities

All wires, pipes, cables and utility connections shall be placed in underground or subsurface conduits. All above ground transformers and vaults for new developments shall be adequately screened to the approval of the Planning Commission. Modifications regarding subsurface conduits or above ground transformers or vaults at existing developed sites shall be subject to the provisions of Section 42.10 of this Chapter. (Ord. 38.716, 9/15/98)

XI-10-35.08 Abutting any R District

Where any MP District abuts any R District, there shall be provided one hundred (100) feet between any MP building and any R district.

(Applicants are advised that mitigating improvements may be needed to eliminate any adverse impacts from the residences and that additional requirements may be imposed on the developer to remedy this situation. City Council minutes, May 4, 1982)

XI-10-35.09 Outdoor Storage

Outdoor storage shall be permitted only when said storage areas are suitably screened and are located at least one hundred (100) feet from any R District and not within any required front or street side yard and such storage areas shall not cover more than fifteen (15%) percent of the site area. Said location and screening of outdoor storage areas shall be to the approval of the Planning Commission. Modifications regarding outdoor storage at existing developed sites shall be subject to the provisions of Section 42.10 of this Chapter. (Ord. 38.716, 9/15/98)

XI-10-35.10 General Standards - All Uses

Uses in the MP District shall be such that they:

- | | |
|---------|--|
| 35.10-1 | Emit no obnoxious, toxic, or corrosive fumes or gases. |
| 35.10-2 | Emit no odors perceptible at the property line. |
| 35.10-3 | Emit no smoke. |

- 35.10-4 Discharge into the air no dust or other particular matter created by any industrial operations or emanating from any products stored prior or subsequent to processing.
- 35.10-5 Produce no heat or glare perceptible beyond the lot boundaries.
- 35.10-6 Utilize all lighting in a manner which produces no glare on public streets or on any other parcel.
- 35.10-7 Produce no physical vibrations perceptible at or beyond the lot boundaries.
- 35.10-8 Produce no electromagnetic radiation or radioactive emission injurious to human beings, animals or vegetation, except under controlled operations being conducted observing standards or methods or operation established by the Nuclear Regulatory Commission. Electromagnetic radiation or radioactive emissions shall not be of an intensity that interferes with the use of any other property.
- 35.10-9 Do not engage in the production or storage of any material designed for use as an explosive, nor in the use of such material in production.
- 35.10-10 Are conducted within a completely enclosed building except as otherwise may be provided by the Planning Commission.
- 35.10-11 Indicate that all industrial uses use only gas, electricity, or preheated oil as a fuel; provided, however, that oil burning equipment may be installed for stand-by emergency use only.

Note

54.13 The provisions amending Sections XI-10-30, XI-10-31 and XI-10-35 of this chapter, related to development standards, shall not apply to any existing improvements (buildings, landscaping, fencing or parking) lawful at the time of installation or improvements which have been approved by the Planning Commission and for which a building permit issued prior to June 17, 1982, and installed in conformance with said approval and permit.

XI-10-35.11 Areas for Collecting and Loading Recyclable Materials

There shall be provided areas for collecting and loading recyclable materials in accordance with the requirements of Subsection 54.15 of this Chapter. (Ord. 38.687, 4/19/94)

UPDATE LOG:

(Ord 38.547, 5/18/82 -- This Section was amended in its entirety. Subsequent amendments will be shown on the appropriate subsection).

(Ord. 38.624, 3/3/87 --)

(Ord. 38.641, 10/11/88 -- Sec. 35.04-1 added)

(Ord. 38.649, 12/5/89 -- Sec. 35.04-5.1 added)

(Ord. 38.662, 1/8/91 - Sec. 35.04-2 amended)

(Ord. 38.677, 1/5/93 -- Sec. 35.04-9 amended)

(Ord 38.687, 4/19/94 - Sec 35.11 Added)

(Ord 38.688, 3/15/94 - Sec. 35.04-2.1 added)

(Ord. 38.700, 6/20/95 - Sec. 35.04-2.2 Added)

(Ord. 38.702, 8-15-95 - Sec 35.04-3 deleted)

(Ord 38.711, 8/20/96- Sec 35.04.6 amended)

(Ord. 38.713, 12-3-96 - Sec 35.05-5.1 Added)

(Ord. 38.716, 9-15-98 Sec. 35.05-8, 35.07, 35.09 amended)

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Section 38.MXD Mixed Use District

(Ord 38.759, 4/2/02)

38.01 Purpose and Intent

The purpose of the Mixed Use ("MXD") Zoning District is to encourage a compatible mix of residential, retail, entertainment, office and commercial service uses within the framework of a pedestrian-oriented streetscape. It is intended that the residential and commercial use allowed in the "MXD" District combine to provide for an "around-the-clock-environment" with urban open areas (i.e. plazas, squares) that serve multiple purposes and can be used for special events.

38.02 Principal Permitted Uses

No building, structure or land shall be used and no building or structure shall be hereafter erected, structurally altered or enlarged, except for the following uses:

38.02-1 Retail stores, offices and commercial service establishments provided they are:

- a. Not Adult Businesses as defined in Subsection 54.18;
- b. Less than or equal to ten thousand (10,000) square feet in gross floor area;
- c. Not open past 10:00 p.m.;
- d. Except for approved outdoor seating areas, are conducted wholly within a building; or
- e. Not specifically noted in Section 38.03 as requiring Conditional Use Permit approval.

38.02-2 Restaurants with no dancing or live entertainment with only ancillary on-premise consumption of beer and wine with no separate bar area, that conform to the following performance standards:

- a. Seating shall not exceed that which the amount of parking allocated for the restaurant space would allow. A sign measuring at least one (1) foot by one (1) foot, with a lettering height of at least three (3) inches, shall be placed in a conspicuous location near the restaurant front entrance stating the maximum total seating allowed. Outdoor seating is allowed if it has been approved as part of the facility's Site and Architectural application and is operated in conformance with any conditions of that approval.
- b. The restaurant shall comply with the City Council's Guidelines for Recycling Enclosures (Resolution No. 6296).
- c. The restaurant shall incorporate measures to reduce odors to acceptable levels, including, but not limited to, installation of a scrubber, carbon filter or similar equipment, on the roof vent to control odors.
- d. All the facility's floor drains, trash compactors and indoor mat and equipment washing areas shall be drained to the sanitary sewer.
- e. Where applicable, the restaurant shall maintain an active account with a tallow hauling company.
- f. The restaurant shall prepare and implement a program assigning restaurant staff responsibility for complying with the following guidelines which shall be adhered to while the restaurant is in operation:
 - Wash all containers and equipment in the kitchen area so that wash water may drain into the sanitary sewer.
 - Keep garbage dumpsters clean inside and out; replace very dirty dumpsters with new, clean ones.
 - Double bag waste to prevent leaking.
 - Place, do not drop or throw, waste-filled bags, to prevent leaking.
 - Keep the ground under and around the garbage dumpsters swept.
 - Sprinkle the ground lightly after sweeping with a mixture of water and a little bleach.

- Hold training sessions to instruct employees on the proper procedures in the handling and disposal of food items; the general maintenance and use of the compactor and any other procedures that would assist the business in complying with all State and local health and sanitation standards. A record of such training must be kept to prove compliance with this requirement.
- Post signs (in English and multi-lingual) inside the premises for all employees identifying procedures for food delivery and garbage disposal.
- All garbage bins shall be stored in the garbage enclosure except for the twelve (12) hours immediately before and after garbage collection.

38.02-3 Medical or dental clinics.

38.02-4 Multi-Family housing. See Section 38.04 regarding prohibition of ground level residential along portions of South Main Street.

38.02-5 Small family day care home.

38.02-6 Planned Unit Developments.

38.02-7 Any other uses which are added to this list by the City Planning Commission, in accordance with the procedure prescribed in Section XI-10-54.02.

38.03 Uses Permitted Subject to Receiving a Conditional Use Permit

38.03-1 The following uses may also be permitted, provided their location and operation is first approved by the Planning Commission, as provided for in Section 57, and they are not Adult Businesses as defined in Subsection 54.18:

- a. Retail stores, offices or commercial service establishments greater than ten thousand (10,000) square feet in gross floor area.
- b. Retail stores, offices or commercial service establishments open past 10:00 p.m.
- c. Arcades, with mechanical or electronic games or games of skill or science.
- d. Auto, recreational vehicle, truck and boat sales with accessory repairs and services. Said accessory repairs and services shall be conducted wholly within a completely enclosed building.
- e. Automobile rental agency.
- f. Billiard centers.
- g. Blueprinting.
- h. Bowling alleys.
- i. Catering establishments.
- j. Cocktail lounges with or without live entertainment.

- k. Commercial laboratories, including medical and dental laboratories.
- l. Large family day care homes and day care centers.
- m. Laundries and dry cleaning establishments.
- n. Liquor stores.
- o. Motels and hotels.
- p. Music or dance instruction.
- q. Pet hospitals and veterinarians.
- r. Pet and bird stores.
- s. Restaurants that do not meet the performance standards listed in Subsection 38.02-2.
- t. Restaurants with a bar area, dancing or live entertainment.
- u. Stores selling used merchandise, such as thrift stores.
- v. Tanning salons.
- w. Temporary tract advertising signs with the exception that no tract signs shall be permitted within six hundred (600) feet of a Santa Clara County Expressway.
- x. Theatres, indoor only.
- y. Rooming and boarding houses for any number of guests.
- z. Group dwellings.
- aa. Any other use which is determined by the Planning Commission to be of the same general character as the above listed conditional uses in accordance with the procedure prescribed in Subsection 54.02.

38.03-2 The following quasi-public uses may also be permitted, provided their location is first approved by the Planning Commission, as provided for in Section 57, they are not Adult Businesses as defined in Subsection 54.18: and they are not located within one thousand (1,000) feet of another quasi-public use listed below:

- a. Places of meeting or assembly, such as auditoriums, banquet halls, fraternal or union hall, churches and other religious institutions.
- b. Hospitals or sanitariums.
- c. Private elementary, middle or high schools.
- d. Vocational schools, if not found objectionable due to noise, odor, vibration or other similar health, safety or welfare basis.

38.03-3 The following commercial service uses may also be permitted, provided their location is first approved by the Commission as provided for in Section 57, they are not Adult Businesses as defined in Subsection 54.18, and they are not located within one thousand (1,000) feet of another commercial service use listed below:

- a. Auto service uses, including but not limited to: gasoline service stations, car washes, tire shops, towing without vehicle storage and auto repair shops of all kinds, radiators, paint, body, glass, brakes, upholstery, and other types if all operations are conducted wholly within a completely enclosed building. Entrances to the service bays shall not be open to the street but shall be designed to face the rear or interior side property line.
- b. Cabinet or carpenter shops if conducted in a completely enclosed building.

- c. Janitorial services and window cleaning services.
- d. Local transportation service facilities (e.g. taxi, parcel service, ambulance, armored car, van storage and auto rental).
- e. Pawnshops.
- f. Plumbing or sheet metal shops.
- g. Sign shops, if conducted wholly within completely enclosed buildings.

38.03-4 The provisions of XI-10-38.03-2 and XI-10-38.03-3, relating to the location of quasi public uses and specified commercial service uses, shall not apply to any lawful uses existing or approved prior to May 2, 2002, except that such uses shall not be allowed to expand beyond the legal parcel area they occupied on May 2, 2002, plus any parcel adjacent to the parcel occupied on May 2, 2002.

38.04 Prohibited Uses

38.04-1 Disinfecting and extermination business.

38.04-2 Ground level residential in the Ground Level Commercial Area as shown on the Midtown Specific Plan Land Use Map, Figure 3.1.

38.04-3 Outdoor storage of vehicles.

38.04-4 Self-service storage facilities.

38.04-5 Vehicle oriented window service facilities.

38.05 Development Standards

38.05-1 Height of Structures. Principal building shall not exceed three (3) stories and forty-five (45) feet. Special architectural features, such as towers or corner elements may be up to fifty-five (55) feet.

38.05-2 Non-Residential Lot Area. Individual sites shall be of such size that all space requirements provided in this Section are satisfied.

38.05-3 Non-Residential Floor Area Ratio. The Floor Area Ratio for non-residential buildings or non-residential uses within mixed use buildings is seventy-five percent (75%, or 0.75).

38.05-4 Residential Density. Residential development shall be a minimum of twenty-one (21) dwelling units per gross acre and shall not exceed thirty (30)

dwelling units per gross acre. The minimum number of residential units may be reduced for parcels less than twenty thousand (20,000) square feet.

38.05-5 Front and Street Side Setbacks.

- a. The Ground Level Commercial Area (as shown on the Specific Plan Land Use Map, Figure 3.1), shall have a build-to line that is fifteen (15) feet behind the curb. The fifteen (15) feet between the curb and the building build-to-line shall be developed with sidewalk and street trees.
- b. All other areas: front and street side setbacks shall be a minimum of eight (8) feet and a maximum of fifteen (15) feet from back of sidewalk. The sidewalk shall be based on either the existing sidewalk or an assumed ten (10) foot wide sidewalk, whichever is wider.
- c. Where a public easement prevents a building from being located in at its required minimum or maximum setbacks, the building shall be located as close to the back of said easement as possible.
- d. All buildings must face onto the street they front upon.
- e. All required front setback areas shall be landscaped or paved to allow for outdoor seating, display of goods, or street furniture.
- f. Balconies, bay windows, porches, stoops and awnings may project into the minimum setback areas provided at least sixty percent (60%) of the required setback area is landscaping.
- g. Trellises, canopies and fabric awnings may project up to five (5) feet into minimum front and street side setback areas and public right of ways, provided they are not less than eight (8) feet above the sidewalk.
- h. A building's first floor may be recessed from either the maximum front and street side building setback line or the specified build-to line for the purposes of an arcade, or a small gathering/dining or special entry area. The arcade shall have a minimum height of (8) feet, a minimum width of eight (8) feet. Other recessed areas may have maximum depth of ten (10) feet, and may not exceed forty percent (40%) of the building's street facing elevation. An entry door area up to nine (9) feet wide may be recessed up to four (4) feet from the back of the sidewalk.

38.05-6 Interior Side and Rear Yard Setbacks.

- a. Interior Side Yard. None required in the Ground Level Commercial Area. In all other areas interior side yards shall be a minimum of ten (10) feet.
- b. Rear Yard. Minimum ten (10) feet.
- c. Setback areas shall be landscaped but may also be occupied by residential accessory buildings or drive aisles.
- d. To mitigate the effects of adjacent service commercial or light industrial uses, increased setbacks and other measures, such as a solid six-foot fence or masonry wall, shall be considered on a case by case basis by the Planning Commission during the site and architectural review process, taking into consideration the nature of adjacent uses.

38.06 Off-Street Parking

38.06-1 All Uses.

- a. No parking spaces are allowed within the front or street side setback areas.
- b. On-street parking along the building's street frontage can be counted toward a development's overall parking requirements.

38.06-2 Non-Residential Uses. There shall be at least the following:

- a. Retail: one (1) automobile stall per two hundred fifty (250) square feet of gross floor area.
- b. Office:
 1. If building is one thousand (1,000) square feet or smaller: one (1) automobile stall per two hundred (200) square feet of gross floor area.
 2. If building is larger than one thousand (1,000) square feet: three and three tenths (3.3) automobile stalls per one thousand (1,000) square feet of gross floor area.
- c. For all other uses refer to Section 53, Off-Site Parking Regulations.

38.06-3 Residential Uses.

- a. Single family dwellings, there shall be at least two (2) covered automobile stalls per unit.
- b. Multiple family units there shall be at least the following:
 1. Studio: one (1) covered automobile stall per unit.
 2. One (1) bedroom: one and one-half (1½) covered automobile stalls per unit.
 3. Two (2) or more bedrooms: two (2) automobile stalls per unit.
 4. Guest parking: fifteen percent (15%) of automobile stalls required in (1) through (3) above. May be covered or uncovered.
 5. Bicycle parking: five percent (5%) automobile stalls required in (1) through (4) above.

38.07 Park and Open Space Requirements for Residential Uses

38.07-1 All residential projects shall provide park land at a ratio of three and one-half (3½) acres per one thousand (1,000) population. Up to one and one-half (1½) of each three and one-half (3½) total park acres required (43%) may be satisfied by the provision of private recreational areas. The remaining park land requirement must be satisfied by either dedication of land to the City for public parks and open space, or payment of an in-lieu fee, as set forth in Section 9 (Park Dedication) of the Milpitas Subdivision Ordinance (Title XI, Chapter 1).

38.07-2 Each residential project shall provide adequate on-site usable open space or recreational facilities to the approval of the Planning Commission through the Site and Architectural Review ("S" Zone) process.

38.08 Utilities

38.08-1 Utilities shall be placed in underground or subsurface conduits.

38.08-2 All mechanical equipment, ground transformers and meters shall be located and screened to minimize visual impacts.

38.08-3 Rooftop mechanical equipment shall be concealed from street level views through roof design that is architecturally integrated with the building, such as equipment wells and parapets.

38.08-4 Public utility distribution meters, vaults and similar installations shall be consolidated in a single area whenever possible and located away from highly visible areas such as street corners and public open spaces.

38.08-5 Backflow preventors shall be located within landscaped setback areas and painted black or dark green to minimize visual impact. Where no landscaped setback areas exist the backflow preventors shall be incorporated into the front of the building to minimize visual obtrusiveness.

38.08-6 Refuse and recycling containers shall not be visible from a public or private street. Such containers shall be stored either within the parking facility of the building or within a vehicular accessway with appropriate screening.

38.08-7 Trash enclosure walls shall incorporate building materials and colors that match the architecture of the building, and be well landscaped.

38.08-8 All telecommunication antennas shall be building façade or roof mounted and screened appropriately.

38.08-9 On Main Street only telecommunication facilities that are disguised to appear as a part of the building architecture (i.e. "stealth" antennas) may be used.

38.09 Design Guidelines

All improvements shall conform to the Midtown Specific Plan, including the Design Guidelines and Standards set forth in Chapter 8.

38.10 Affordable Housing

Affordable housing units should be provided in all new housing projects. While twenty percent (20%) is the minimum goal, affordable unit requirements will be determined on a project by project basis, taking into consideration the size and location of the project, the type of housing unit, proximity to transit and the mix of affordable units in the vicinity.

38.11 Exceptions to Standards

38.11-1 Exceptions to all but the use, floor area ratio, density, and park land requirement regulations (Subsections 38.02, 38.03, 38.04, 38.05-3, 38.05-4 and 38.07-1) of this Section 38 may be approved by the Planning Commission through approval of a Conditional Use Permit in accordance with the requirements of Section 57.

38.11-2 In addition to the required findings under Chapter 57, the Planning Commission must be able to make the following two additional findings for such exceptions:

- a. The exceptions meet the design intent identified within the Specific Plan and do not detract from the overall architectural, landscaping and site planning integrity of the proposed development.
- b. The exceptions allow for a public benefit not otherwise obtainable through the strict application of the specified standard.

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Section 39. "POS" PARK AND PUBLIC OPEN SPACE ZONING DISTRICT

Section 39 Contents

- 39.01 Purpose
- 39.02 Uses Permitted

- 39.03 Conditional Uses
- 39.04 Height Restrictions
- 39.05 Area, Lot Width and Yard Requirements
- 39.06 Off-Street Parking Requirements
- 39.07 Amortization

39.01 Purpose

To provide for public open space and recreational uses in order to preserve environmentally sensitive areas and accommodate community service or recreational facilities

39.02 Uses Permitted

The following are the principal permitted uses in a POS District:

39.02-1 Public parks and recreational facilities, with the exception of public community centers and public indoor sports centers.

39.02-2 Public trails.

39.02-3 Public community gardens.

39.03 Conditional Uses

The following uses may also be permitted if their location is first approved by the Planning Commission, as provided for in Section 57, after considering a recommendation from the Parks, Recreation, and Cultural Resources Commission:

39.03-1 Public community centers and public indoor sports centers.

39.03-2 Day care centers.

39.03-3 Public utility facilities.

39.03-4 Radio or television transmitters.

39.04 Height Restrictions

No structures shall exceed either two and one-half (2 1/2) stories or thirty (30) feet in height. This does not include light standards, public utility facilities, and radio or television transmitters.

39.05 Area, Lot Width and Yard Requirements

The following minimum requirements shall be observed:

39.05-1 Lot size: No requirement is established.

39.05-2 Lot width: No requirement is established.

39.05-3 Yards: The minimum front, side and rear yards in the POS district shall be equal to the respective front, side and rear yards required in the most restrictive abutting district; provided that no yard adjoining a street shall be less than twenty (20) feet, and that no side yard shall be less than ten (10) feet.

39.06 Off-Street Parking Requirements

There shall be provided off-street parking spaces for automobiles in accordance with the requirements of Section 53, except that neighborhood-serving parks, trails and open space areas are not required to provide parking unless required by the City Council.

39.07 Amortization

Notwithstanding Section XI-10-56.08, every non-conforming use in a POS District shall be removed or otherwise brought into conformance within four (4) months of the effective date of this Chapter.

(Ord. 38.733, 1/16/98 Entire Section 39 added)

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Section 40 "A" Agricultural District

Section 40 Contents

- 40.01 Purpose
- 40.02 Uses Permitted
- 40.03 Accessory Uses
- 40.04 Conditional Uses
- 40.05 Height Regulations
- 40.06 Area, Lot Width and Yard Requirements
- 40.07 Other Required Conditions
- 40.08 Off-Street Parking Requirements

40.01 Purpose

To preserve lands best suited for agricultural use from the encroachment of incompatible uses, and to preserve in agricultural use land suited to eventual development in other uses, pending proper timing for the economical provision of utilities, major streets, and other facilities so that compact, orderly development will occur. Change of zoning district from "A" to any other zoning district shall only be made in general accord with the general plan. (Ord 38.35, 7/18/63)

40.02 Uses Permitted

The following are the principal permitted uses an the "A" District: (Ord 38.35, 7/18/63)

40.02-1 Agriculture; except that in an "A" District designated for future residential use in the General Plan, dairying and animal and poultry husbandry shall be conditional uses.

40.02-2 Ranch and farm dwellings appurtenance to a principal agricultural use.

40.02-3 Public parks and public areas.

40.02-4 Riding academies and public stables, except when located in an "A" District designated for future residential use in the General Plan, in which event said uses shall be conditional uses.

40.02-5 Guest ranches, except when located in an "A" District designated for future residential use in the General Plan, in which event said use shall be a conditional use.

40.03 Accessory Uses

The following are the accessory uses permitted in an "A" District: (Ord 38.35, 7/18/63)

40.03-1 Living quarters of persons regularly employed on the premises; but not including labor camps and labor dwellings, accommodations, or areas for transient labor.

40.03-2 Guest houses, not rented or otherwise conducted as a business.

40.03-3 Home occupations and professional offices in the home.

40.03-4 Office incidental and necessary to the conduct of a permitted use.

40.03-5 Private garages, parking areas and stables.

40.03-6 Roadside stands not exceeding for hundred (400) square feet in floor area, for the sale of agricultural products grown on the premises.

40.03-7 Deleted (Ord 38.185, 8/5/69)

40.03-8 Other accessory uses and buildings customarily appurtenant to a permitted use.

40.04 Conditional Uses

The following are conditional uses in an "A" District:

40.04-1 Private recreation areas, uses and facilities, including, but not limited to, country clubs, swimming pools, and golf courses.

40.04-2 Kennels.

40.04-2.1 Small and large family day care home, and day care center (Ord 38.702, 8-15-95)

40.04-3 Commercial animal feed and sales yards; commercial agricultural processing plants; fertilizer plants and yards.

40.04-4 Quarters, accommodations or areas for transient labor, such as labor cabins or camps.

40.04-5 Commercial recreational facilities including, but not limited to , outdoor theaters, golf driving ranges, commercial swimming pools (but not including such facilities in which the principal use is enclosed in a building, such as bowling alleys and skating rinks). Incidental to such permitted open recreational uses, there may also be permitted hotels, restaurants, and similar commercial facilities, excluding Adult Businesses, as defined in Subsection 54.18. When the same are located on a minimum twenty (20) acre site under single ownership, provided that the total floor area of all enclosed structures and roofed areas upon the total site shall not exceed forty-thousand (40,000) square feet. (Ord 38.711, 8/20/96)

40.04-6 Cemeteries, crematories, mausoleums, and columbariums.

40.04-7 Commercial mines, quarries, and gravel pits.

40.04-8 Private airports and landing strips.

40.04-9 Public and quasi-public buildings, structures, and uses of an administrative, educational, religious, cultural, or public service type.

40.04-10 Temporary tract advertising signs with the exception that no tract signs may be permitted within six hundred (600) feet of a Santa Clara County Expressway. (Ord 38.207, 11/17/70).

40.05 Height Regulations

No structures shall exceed wither two and one-half (2-1/2) stories or thirty (30) feet in height. This Section does not include freestanding sign heights which are regulated by Ordinance No. 124, sign Ordinance, enacted as Chapter 30, Title XI of the Milpitas Municipal code. (Ord 38.185, 8/5/69)

40.06 Area, Lot Width and Yard Requirements

The following minimum requirements shall be observed except for conditional uses: (Ord 38.35, 7/18/63)

| | | |
|---------|-------------|----------------------------|
| 40.06-1 | Lot Size: | Five (5) acres. |
| 40.06-2 | Lot Width: | Three hundred (300) feet. |
| 40.06-3 | Front Yard: | Fifty (50) feet. |
| 40.06-4 | Side Yards: | Each side fifty (50) feet. |
| 40.06-5 | Rear Yard: | Fifty (50) feet. |

40.07 Other Required Conditions

The following additional conditions shall apply in an "A" District:

40.07-1 Any building or enclosure in which animals or fowl, except domestic pets in household numbers, are contained shall be distant at least two hundred (200) feet from any lot in any "R" or "C" District, or from any school or institution for human care.

40.07-2 Site plan and architectural approval are required of all conditional uses.

40.07-3 The minimum lot area per dwelling unit shall be not less than two and one-half (2-1/2) acres, except as herein specified for labor camps.

40.08 Off-Street Parking Requirements

There shall be provided off-street parking for automobiles in accordance with the requirements of Section 53. All such parking spaces shall be improved as provided for in Subsection 54.03. (Ord 38.384, 10/26/76)

UPDATE LOG:

(Ord 38.711, 8/20/96- Sec 40.04.5 amended)

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Section 41 "DB" Density Bonus Combining District

Section 41 Contents

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- 41.02 Density Bonus Authorization
- 41.03 Density Bonus Conditions
- 41.04 Definitions
- 41.05 Determination of Maximum Allowable Densities
- 41.06 Application
- 41.07 Unit Type and Location

- 41.08 Agreement
- 41.09 Retaining Affordability
- 41.10 Affordable Rents

41.01 Purpose

The "DB" District, Density Bonus Combining District, is intended to encourage the provision of affordable housing in the community by granting density bonuses and other incentives to developers of residential projects that construct or otherwise provide for housing units that will be available for purchase or rent by senior citizens and lower income persons and households. The "DB" District is applicable in all zoning districts that allow residential development. This Ordinance is adopted in conformance with Chapter 4.3 of Title 7 of the Government Code, Section 65915.

41.02 Density Bonus Authorization

The City Council, after recommendation by the Planning Commission, may authorize an increase in allowable dwelling unit density for those residential projects that assist in meeting the lower income or senior housing needs of the community. When the Planning Commission and Council make a finding that a developer has complied with the requirements of XI-10-41.03 and XI 10-41.09, the City Council, after recommendation by the Planning Commission, may award a density increase, with the approval of the project. The Planning Commission shall hold at least one public hearing, prior to making its recommendations to the City Council. The applicant shall submit architectural plans for all structures on the project area for review and approval in conjunction with the Planning Commission and City Council consideration of the Density Bonus application. Upon receipt of the recommendation of the Planning Commission, the City Council shall hold at least one public hearing, prior to any final action on an application. Notice of hearing shall be given in accordance with the provisions of Subsection 64 of this Chapter.

41.03 Density Bonus Conditions

A. When a developer of housing agrees or proposes to construct at least: (1) twenty (20%) percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the California Health and Safety Code; or (2) ten (10%) percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety code; or (3) fifty (50%) percent of the total dwelling units of a housing development for senior citizen housing, as defined in Section 51.2 of the California Civil Code, the City shall:

- (1) Grant a density bonus and at least one concession or incentive as defined in Section 10-41.04 unless the City makes a written finding that the additional concession or incentive is not required in order to provide for affordable housing costs or for rents for the targeted units to be set as specified in Section XI-10-

41.07; or may

(2) Provide other incentives of equivalent financial value based upon the land cost per dwelling unit.

B. If a developer agrees to construct both twenty (20%) percent of the total units for lower income households and ten (10%) percent of the total units for very low income households, the developer is entitled to one density bonus and one additional concession or incentive.

Additional bonuses, concessions and/or incentives may be granted by the City Council after recommendation of the Planning Commission or upon finding that the project provides a greater percentage of units for lower income households.

41.04 Definitions

A. For the purposes of Sections A and B of XI-10-41.03, "density bonus" means a density increase of at least twenty-five (25%) percent over the otherwise maximum allowable residential density as provided for in Title XI, Chapter 10, Section 54.07-6(c) of the Milpitas Municipal Code and Resolution No. 3489, as amended from time to time. The density bonus shall not be included when determining the number of housing units which is equal to ten or twenty (10 or 20%) percent of the total.

B. For the purposes of this Chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements which exceed the minimum building standards approved by the State Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in lot size, lot dimensions and building setbacks, and in the ratio of vehicular parking spaces that would otherwise be required.

(2) Other regulatory incentives or concessions proposed by the developer or the City which result in identifiable cost reductions.

(3) This subdivision does not limit or require the provision of direct financial incentives for the housing

development, including the provision of publicly owned land by the city, county, or city and county, or the waiver of fees or dedication requirements.

C. For purposes of this Chapter, "Housing Development" means one or more groups of projects for residential units constructed in the planned development of the City.

41.05 Determination of Maximum Allowable Densities

For the purpose of determining the maximum allowable densities within the Milpitas General Plan and Zoning Ordinance the densities allowed shall be determined in the same manner as are Planned Unit Developments as set forth in Title XI, Chapter 10, Section 54.07-6(c) of the Milpitas Municipal Code and Resolution No. 3489 as amended from time to time.

41.06 Application

The density bonus referred to in Section XI-10-41.03 shall apply to housing developments consisting of five or more dwelling units.

41.07 Unit Type and Location

All inclusionary units should be reasonably dispersed throughout the project, shall contain on average the same number of bedrooms as the non-inclusionary units in the project, and shall be comparable with the non-inclusionary units in terms of appearance, materials and finished quality. The Planning Commission may recommend to the City Council modifying the requirements as to unit size or type if it is found that such a modification would better serve the affordable housing need of Milpitas.

41.08 Agreement

Within sixty (60) days of the approval of a project containing inclusionary units, the applicant shall execute and record at the Santa Clara County Recorder's Office the City's Agreement Imposing Restrictions on Real Property, which Agreement shall explain the inclusionary requirements.

41.09 Retaining Affordability

A developer shall agree to and the City shall insure continued affordability of all lower or very low income density bonus units for thirty (30) years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. If the City does not grant at least one (1) additional concession or incentive, in addition to a density bonus as specified in XI-10-41.03(1), the developer shall agree to and the City shall ensure continued affordability for a minimum of ten (10) years of all lower or very low income housing units receiving a density bonus.

41.10 Affordable Rents

Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code shall be affordable at a rent that does not exceed thirty (30%) of sixty (60%) percent of the Santa Clara County median income.

Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code shall be affordable at a rent that does not exceed thirty (30%) of fifty (50%) percent of County median income.

Section 41 was amended by repealing the "B" Combining District and replacing it with the "DB" Combining District, Ordinance 38.663, August 20, 1991.

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Section 42 "S"

**"S" Combining District
(Site and Architectural Review or "S" Zone) (Ord 38.636,
8/2/88)**

Section 42 Contents

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- 42.04
- 42.05
- 42.06
- 42.07
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- 42.11 Consideration of "S" Zone Pending Zoning Amendment

42.01 Purpose

Site and Architectural Development Review or an "S" Zone is intended to promote orderly, attractive, and harmonious development; recognize environmental limitations on development; stabilize land values and investments; and promote the general welfare by preventing or disallowing establishment of uses or erection of structures having qualities which would not meet the specific intent clauses or performance standards of this Chapter or which are not properly related to their sites, surroundings, traffic circulation, or their environmental setting. Where the use proposed, the adjacent land uses, environmental significance or limitations, topography, or traffic circulation is found to so require, the Planning Commission may establish more stringent regulations than those otherwise specified for the District. (Ord 38.636, 8/2/88)

42.02 Applicability

The following regulations shall apply in all districts which are combined with the "S" District.

Prior to approving a new "S" Zone application or an "S" Zone amendment application pursuant to Section 42.10, the Planning Commission shall hold a noticed public hearing in accordance with Title XI, Chapter 10, Sections 64.01, 64.02 and 65. (Ord 38.636, 8/2/88, Ord 38.706, 7/16/96)

42.03 Requirements Generally

Approval may be granted by the Planning Commission, or by the City Council upon appeal or within the Hillside District, if all of the following findings are made, based on the evidence in the record: (Ord 38.706, 7/16/96)

1. The lay-out of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.
2. The project is consistent with the Milpitas Zoning Ordinance.
3. The project is consistent with the Milpitas General Plan.
4. If located within the Midtown area, the project is consistent with the Midtown Specific Plan. (Ord 38.759, 4/2/02)

42.04 Application-Contents

Every application for Site and Architectural Development Review shall be in proper form and shall be accompanied by plans drawn to scale indicating clearly and with full dimensions the following information:

1. Site plan --- parcel dimensions in distance.
2. Building and Structures -- their location, size, height, colors, and materials.
3. Dimensions of yards and open spaces between buildings.
4. Fences and walls -- their architectural design, location, height, colors, and materials.
5. Parking spaces -- their location, number, and dimensions.
6. Access -- vehicular, pedestrian and service, with points of ingress and egress and the internal circulation pattern of the parking lot area.
7. Street dedications and improvements -- existing and proposed, if any.
8. Signs -- their location, size, types of materials, and lighting method.
9. Loading or Service Areas -- their location, and dimensions.
10. Lighting -- their architectural design, location and light patterns.
11. Landscaping -- its location, size, quantity, and type of plant material.
12. Shadow Studies -- drawings showing shadows of the building or structures (taken on December 22nd, between the hours of 10:00 a.m. to 2:00 p.m.).
13. Such other data as may be required under the circumstances of the case to permit the City Council, Planning Commission, Planning Commission Subcommittee, or Planning Division staff to make the required approvals. (Ord 38.636, 8/2/88, Ord. 38.716, 9/15/98)

42.05 Application-Investigation and Report

The Planning Division, upon receipt of an application for a Site and Architectural Review or "S" Zone, shall make such investigations as necessary to determine whether or not the proposed Use or Structure conforms or may be conditioned to conform fully to the intent clauses and performance standards for the underlying District(s) as herein set forth. For applications requiring review by the Planning Commission or the City Council, the Planning Division shall prepare a written report which shall be presented to the Planning Commission and/or City Council, and a copy shall be made available to the applicant and property owner prior to the Planning Commission's and City Council's review date. (Ord 38. 636, 8/2/88, Ord 38.706, 7/16/96, Ord. 38.716, 9/15/98)

42.06 Additional Information Required

The Planning Commission may require additional information in connection with the project in order to protect the character of other property in the neighborhood. Such regulations may include, but are not limited to, adequate screening of said lot by a fence or wall, landscaping, paving, and lighting. (Ord 38.636, 8/2/88)

42.07 Special Conditions

In any district that is combined with an "S" District, the Planning Commission may specify, but shall not be limited to, building line setbacks, yard regulations, area regulations and building height limits which will protect the general character of the neighborhood. (Ord 38.636, 8/2/88)

42.08 Planning Commission Decision

At the conclusion of such review, the Planning Commission shall determine from the reports, data and testimony submitted, whether the use and structures will meet the requirements and intent of this Chapter, and upon making an affirmative determination, may approve the application. If from the information submitted, the Planning Commission finds that compliance with the requirements of this Chapter has not been secured, it shall approve, conditionally approve or disapprove the application subject to specified conditions, changes, or additions as will assure compliance.

No building permit shall be issued for a use, and no use of any parcel shall take place, in a district which is combined with the 'S' Combining District unless those items listed in Subsection 42.04 have been submitted to and approved by the Planning Commission or upon appeal to the City Council. (Ord 38.636, 8/2/887, Ord 38.706, 7/16/96)

42.09 Compliance with Conditions

Whenever a plan for the development of a building site has been the subject of a Site and Architectural Development Review or "S" Zone process as herein above specified and has been given final approval, the use of the building site thereafter shall be subject to compliance with the plan in conformance to all details specified thereon and subject to all the conditions set forth in the action of approval. (Ord 38.636, 8/2/88)

42.10 Applications for Modification or Amendment

The Planning Commission shall hear and decide on applications to modify or amend any conditions or site, architectural or landscape approvals. Amendments shall be subject to the same procedure and regulations as those applicable to the original application, except for minor site, architectural and landscape modifications as specified herein, which shall be subject to the approval of the Planning Division or a Planning Commission Subcommittee consisting of two Commissioners. The following "S" Zone Amendments shall be subject to a public hearing and review by the Planning Commission as required by Section 42.02 of this Chapter. (Ord 38. 636, 8/2/88, Ord 38.706, 7/16/96; Ord. 38.716, 9/15/98)

- (a) Additions of 10,000 square feet or greater;
- (b) Any deletion or amendment of a previously imposed condition of approval;
- (c) A proposal which in the opinion of the Principal Planner or the Planning Commission Chair has a likelihood of affecting public health, safety or welfare or resulting in substantial public controversy.

42.10-2 Minor Modifications Subject to Approval by Planning Commission Subcommittee or Planning Division Staff (Ord. 38.716, 9/15/98)

The items set forth herein are subject to approval by the Planning Commission Subcommittee or Planning Division staff, as specified herein. An applicant for a minor amendment shall submit a filing fee in accord with a schedule adopted by Council Resolution and shall also submit one set of plans illustrating the proposed modifications and any other drawings or materials as required under the circumstances of the case to permit the Planning Division or Planning Commission Subcommittee to make the required approvals. Notwithstanding any other provision of Chapter 10, a public hearing is not required prior to approval by the Planning Division Staff or Planning Commission Subcommittee for the items set forth in Section 42.10-2.

If the Planning Division staff or Planning Commission Subcommittee deny a project, or if the Planning Division staff or Planning Commission Subcommittee believe, in its sole discretion, that the application is beyond their approval authority due to the controversial nature of the project, or uncertainty regarding the finished appearance of the proposed project, then the Planning Division staff may require review by the Planning Commission Subcommittee in the event of a decision by the Planning Division staff, and the Planning Commission Subcommittee may require review by the Planning Commission in the event of a decision by the Planning Commission Subcommittee. If the Planning Commission Subcommittee members disagree on a decision for a project, then the project will be agendized for Planning Commission review, with no additional fees required. The Planning Division staff or Planning Commission Subcommittee shall not approve any modifications which: (1) delete or amend any

required special conditions which may affect the overall design and development of the site; (2) which affect environmental impacts (i.e. noise, traffic, geological constraints, etc.) based on previous environmental review of the project: and (3) delete or amend any issue or condition specifically relating to public health and safety.

In addition, the Planning Division staff or Planning Commission Subcommittee should ensure that any approval (1) recognizes and respects the nature of the neighborhood and site, development patterns, materials used, and the expectations of those who will see and use the building; (2) assures that modifications satisfy functional requirements, are interesting to view, yet uncluttered and screened with appropriate compatible materials; and (3) assure that the modification will not interfere with the privacy, quiet enjoyment or view of the surrounding properties.

Additionally, if the applicant desires review by the Planning Commission, staff shall agendaize the project for the next available Planning Commission meeting. Any decision by the Planning Division staff or Planning Commission Subcommittee is subject to appeal to the Planning Commission and ultimately the City Council, pursuant to the provisions set forth in Chapter 10.

The following criteria shall apply to minor modifications for the following project types in "S" combining districts. Certain minor modifications may be approved in the Hillside district, as specified below and in Section 45.09 of this Chapter.

A) Roof Screens, Roof-Top Equipment

Planning Staff may approve:

- 1) Roof screen expansions which match colors and materials of existing screen.
- 2) New roof screens which complement building materials and/or include tex-cote finish or stylized design using materials and color scheme to tie in with the building (no non-decorative plywood screens). Where possible, screening of roof top equipment shall employ a single large screen rather than numerous small screens. No parapet extensions may be approved.
- 3) Roof-top equipment which exceeds the height of existing roof screens, if line-of-sight drawings demonstrate that the equipment will

not be visible from surrounding view points.

4) Roof-top HVAC or other potentially noisy equipment on a building which abuts a Residential or Mobile Home Park combining district or use, if the applicant submits acoustical certification that noise levels will not exceed 60 dB DNL at the shared property line. Such equipment must be visually screened from surrounding view points, including the residential uses.

B) Building Color Changes

Planning Staff may approve:

- 1) Color changes for all buildings outside of the Historical Commercial District, Hillside district and PUD's, so long as the proposed colors are earth tone, muted and/or compatible with the surrounding area and development.
- 2) Color changes for buildings within a PUD, including Hillside PUD's, so long as building color complies with any listed development standards or special conditions of that PUD.

Planning Commission

Subcommittee may approve:

- 1) Color changes for Hillside residences, including homes within a PUD which does not specify color choices, so long as the proposed colors are earth tone, muted and compatible with the surrounding development. Applicant shall submit letter of support from applicable homeowners association.
- 2) Color changes for buildings within the Historical Commercial District, so long as the proposed colors comply with City Council Resolution No. 6077. However, no color changes may be approved for designated historical or cultural resource structures.

C) Re-Roofs

Planning Staff may approve:

- 1) Re-roofs for flat roofs, behind parapets, which are not visible from surrounding view points.
- 2) Re-roofs which use the same material as previously approved.
- 3) Change in roof material for homes within a PUD, including Hillside PUD's, so long as the proposed roof material complies with any listed development standards of that PUD.
- 4) Change in roof material for all Residential Valley Floor "S" combining districts. However, asphalt

Planning Commission

Subcommittee may approve:

- 1) Change in roof material for R1-H lots east of the Crestline. However, asphalt composition and metal material may not be approved.
- 2) Change in roof material for buildings in Commercial and Industrial districts. However, asphalt composition and metal material may not be approved.

composition and metal roof material may not be approved.

D) Minor Exterior Building Changes, Including But Not Limited to, Doors, Entryways, Patios and Patio Covers, Walkways, ATM's, Awnings, Loading Areas

Planning Staff May Approve:

1) In Commercial and Industrial districts, minor exterior building changes as described below, provided that the project complements the colors, materials and design of the building, with no loss of required parking, no net reduction in the number of on-site trees and no loss of protected trees as defined in Section X-2-7.01:

- a. Windows and person doors which match existing or which complement the building facade.
- b. New or expanded patios, patio covers, awnings and canopies at the rear or sides of a building, except on the street side of a corner lot.
- c. Landscape deletion (i.e. shrubs and groundcovers) to accommodate new walkways which are required for building exiting purposes or handicap accessibility.
- d. ATM's proposed on an exterior wall of an existing bank in Commercial and Industrial districts.
- e. Minor changes to architectural elements which do not change the overall design of a building.
- f. Replacement of windows with roll-up doors (and vice versa) when located toward the interior side or rear of a site.
- g. Metal canopies over equipment storage yards at the rear of commercial or industrial sites, provided they are not visible from public streets or abutting a Residential or Mobile Home

Planning Commission

Subcommittee May Approve:

1) In Commercial and Industrial districts, minor exterior building changes as described below, provided that the project complements the colors, materials and design of the building, with no loss of required parking, no net reduction in the number of on-site trees and no loss of protected trees as defined in Section X-2-7.01:

- a. New main entryways at the building front or street side which feature architectural projections (i.e. porticos, entryway roof covers, trellises, etc.).
- b. New or expanded patios, canopies/patio covers, trellises and awnings proposed at the front or street side of a building.
- c. New fountains or other decorative amenities.
- d. New loading areas and revisions to existing loading areas proposed at the front half of the building or lot, except where the project area abuts a Residential or Mobile Home Park combining district or use.
- e. ATM's proposed on a non-bank building and other pedestrian-oriented in-wall automated service machines.

2) In the Hillside district, minor exterior building changes as described below, provided that the project complements the colors, materials and design of the building.

- Park combining district or use.
- h. New loading areas and revisions to existing loading areas, when located toward the rear or side of a site, except for the street side of corner lots, or except if the project area abuts a Residential or Mobile Home Park combining district or use.

- a. Minor changes to architectural elements which do not change the overall design of a building.
- b. Windows, window awnings and person doors which match existing or which complement the building facade.

2) In all Residential Valley Floor "S" combining districts, minor exterior building changes as described below, provided that the project complements the colors, materials and design of the building.

- a. Awnings, patio covers, and gazebos which comply with height, setback, and yard coverage requirements. The applicant shall provide the Planning Division with written, signed consent of adjoining residential property owners and applicable homeowners association.
- b. Minor changes to architectural elements which do not change the overall design of a building.
- c. Windows and person doors which match existing or which complement the building facade.

3) Minor exterior building changes for residences within Hillside PUD's which are specifically conditioned to allow a staff approval process for alterations subsequent to initial construction of the home.

E) Landscape Changes

Planning Staff May Approve:

- 1) Replacement planting of similar landscape materials and addition of landscaping. Landscaping shall comply with Ordinance No. 238 (water efficient landscape regulations).
- 2) Deletion of non-required landscaping up to 200 square feet in area to accommodate modifications to existing developed sites; however, in Commercial and Industrial districts, and for conditional uses within Residential Valley Floor "S" combining districts, no net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved.

Planning Commission**Subcommittee May Approve:**

- 1) Deletion of non-required landscaping exceeding 200 square feet in area, to accommodate modifications to existing developed sites; however, in Commercial and Industrial districts, and for conditional uses within Residential Valley Floor "S" combining districts, no net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved.

F) Exterior Lighting**Planning Staff May Approve:**

- 1) New light standards and wall-mounted light fixtures within Commercial and Industrial districts on those sites which do not abut Residential or Mobile Home Park combining districts or uses. New light fixtures shall match existing on-site light fixtures in terms of height, style, design and wattage, and shall be spaced appropriately to maximize pedestrian safety.

Planning Commission**Subcommittee May Approve:**

- 1) New light standards and wall-mounted light fixtures in all Valley Floor "S" combining districts. New light fixtures shall match existing on-site light fixtures in terms of height, style, design and wattage, and shall be spaced appropriately to maximize pedestrian safety. Light fixtures shall be located and shielded to prevent glare onto Residential or Mobile Home Park combining districts or uses.

G) Parking Revisions, Restriping**Planning Staff May Approve:**

- 1) Parking lot restriping, including deletion of stalls, in all Valley Floor "S" combining districts, provided that minimum parking ordinance requirements are met, except as provided in Section XI-10-54.15-3 of the Milpitas Municipal Code (recycling areas). However, there shall be no reduction in number of parking spaces if the site contains restaurants or banks. The following requirements shall apply:

Planning Commission**Subcommittee May Approve:**

- 1) Parking lot restriping, including deletion of stalls, in all districts, including Hillside, provided that parking ordinance requirements are met, except as provided in Section XI-10-54.15-3 of the Milpitas Municipal Code (recycling areas).

- a. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas

| | |
|--|--|
| <ul style="list-style-type: none"> a. In Commercial and Industrial districts, new driveways from public rights-of-way may not be approved. b. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate parking revisions. | <p>Municipal Code, may be approved to accommodate parking revisions.</p> |
|--|--|

H) Fences, Walls

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|---|---|
| <p>Planning Staff May Approve:</p> <p>1) Fences in Commercial and Industrial districts, except for the Historical Commercial District, which comply with height and openwork construction requirements listed in Section XI-10-54.11 of the Milpitas Municipal Code (Fences), and which comply with the following:</p> <ul style="list-style-type: none"> a. Chain link or barb wire perimeter fencing may not be approved. b. Fencing/wall material and color shall be compatible with surrounding development. c. Fencing at the front or street side of a site in the Commercial or Industrial districts must consist of decorative wrought iron, steel picket or masonry construction (no chain link) and shall require Traffic Engineering clearance. d. Parking lot fencing/gates shall be cleared by the City's Fire Department. <p>2) Fences in Residential "S" combining districts, which comply with height and openwork construction requirements listed in Section XI-10-54.11 of the Milpitas Municipal Code (Fences), and which comply with the following:</p> | <p>Planning Commission Subcommittee May Approve:</p> <p>1) Fences in the Historical Commercial District which meet the height and openwork construction requirements listed in Section XI-10-54.11 of the Milpitas Municipal Code (Fences) and which comply with City Council Resolution No. 6077. Any fencing/gates in parking lots requires clearance by the City's Fire Department.</p> <p>2) Chain link perimeter fencing in Commercial and Industrial districts, which comply with the following:</p> <ul style="list-style-type: none"> a. Fencing shall be at the rear or interior side of the site. b. The fencing shall consist of vinyl clad chain link with or without vinyl slats. Type of chain link fencing (i.e. deletion of vinyl clad requirement, use of slats) shall be to the discretion of the Planning Commission Subcommittee (i.e. in circumstances where the proposed fencing is to continue a line of existing chain link fencing). c. In all districts, fencing material and color shall be compatible with surrounding development. d. Parking lot fencing/gates shall be cleared by the City's Fire Department. |
|---|---|

- a. Chain link or barb wire perimeter fencing may not be approved.
- b. Parking lot fencing/gates shall be cleared by the City's Fire Department.

(I) Building Additions

Planning Staff May Approve:

1) Residential building additions for legal, conforming single-family and two-family dwellings in the Valley Floor Residential "S" combining districts, and for single-family dwellings in Hillside PUD's which specifically allow for staff approval, provided building height, parking, setback, yard coverage, impervious surface coverage, landscaping, open space and other ordinance requirements are met. The following shall also apply:

- a. The building addition shall be on the rear half of the building and shall not exceed 200 square feet in size.
- b. The applicant shall provide the Planning Division with written, signed consent of adjoining residential property owners and applicable homeowners association.
- c. The addition shall comprise building materials, colors and style which complement the existing structure.

Planning Commission

Subcommittee May Approve:

1) Commercial and Industrial building additions up to 10,000 square feet in size, provided that the site is not adjacent to a Residential or Mobile Home Park combining district or use, and that building height, parking, setback, yard coverage, Floor Area Ratio, landscaping, open space and other ordinance requirements are met. The following shall also apply:

- a. Architecture shall match that of existing building in terms of material, colors, style, etc.
- b. The height of the addition shall not exceed the height of the adjacent portion of the existing building.
- c. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate an addition.

2) Residential building additions exceeding 200 square feet in size for legal, conforming single-family and two-family dwellings in the Valley Floor Residential "S" combining districts, and for single-family dwellings in Hillside PUD's which are specifically conditioned not to require Planning Commission or City Council review for building additions, provided building height, parking, setback, yard coverage,

impervious surface coverage, landscaping, open space and other ordinance requirements are met. The following shall also apply:

- a. The applicant shall provide the Planning Commission Subcommittee with written, signed consent of adjoining residential property owners and applicable homeowners association.
- b. The addition shall comprise building materials, colors and style which complement the existing structure.

J) Accessory Buildings

Planning Staff May Approve:

1) Accessory buildings in the Residential Valley Floor "S" combining districts, provided building height, parking, setback, yard coverage and other ordinance requirements are met. The following shall also apply:

- a. Accessory buildings for conditional uses in Residential R1 and R2 districts and for permitted and conditional uses in R3 districts shall comprise building materials, colors and style which complement the existing main structure.
- b. The applicant shall provide the Planning Division with written, signed consent of adjoining residential property owners and applicable homeowners association.

Planning Commission

Subcommittee May Approve:

1) Accessory buildings up to 2,500 square feet in area in Commercial and Industrial districts, provided that the proposed structure is not adjacent to a Residential or Mobile Home Park combining district or use, and provided that building height, parking, setback, yard coverage, Floor Area Ratio, landscaping, open space and other ordinance requirements are met. The following shall also apply:

- a. Accessory buildings must be located on the rear half of the lot. On corner lots, the accessory building must be set back from the adjacent street as least as far as the main building.
- b. Accessory buildings must be of permanent construction (no modular buildings or metal buildings) with the exception of small pre-fabricated structures for chemical storage and the like, so long as such structures are adequately screened from public rights-of-way.
- c. Architecture shall match that of

- the existing building in terms of material, colors, style, etc.
- d. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate an accessory building.

K) Trash/Recycling Enclosures, Transformers, Above Ground Tanks, Exterior Equipment, Equipment Enclosures and Storage Areas

Planning Staff May Approve:

1) Trash/recycling, equipment or storage enclosures up to 200 square feet in size in Commercial and Industrial districts, proposed at the rear of the building or lot and where least visible from public rights-of-way, and which comply with the following:

- a. Enclosure may not be approved adjacent to a Residential or Mobile Home Park combining district or use.
- b. set back at least as far as the main building.
- c. Colors and materials of the enclosure shall complement the building and shall consist of masonry wall such as split face block or masonry finished to match the building or other solid screening material utilizing colors and materials which complement the building.
- d. Gates shall be solid metal painted to match the enclosure.
- e. The enclosure shall screen the dumpsters, trash compactors or equipment.
- f. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate an enclosure.

Planning Commission

Subcommittee May Approve:

1) Trash/recycling, equipment or storage enclosures exceeding 200 square feet in size in Commercial and Industrial districts and enclosures for conditional uses in Residential districts (except Hillside). The following shall apply:

- a. Colors and materials of the enclosure shall complement the building and shall consist of masonry wall such as split face block or masonry finished to match the building.
- b. Gates shall be solid metal painted to match the enclosure.
- c. The enclosure shall screen the dumpsters or trash compactors.
- d. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate an enclosure.
- e. When feasible, sides and rear of enclosure in all districts shall be landscaped.
- f. On-site parking shall meet ordinance requirements, except as provided in Section XI-10-54.15-3 of the Milpitas Municipal Code.
- g. Trash enclosures shall be located

- g. When feasible, sides and rear of the enclosure shall be landscaped.
- h. On-site parking shall meet ordinance requirements, except as provided in Section XI-10-54.15-3 of the Milpitas Municipal Code.

2) Chain link, slatted enclosures up to 200 square feet in size for trash/recycling, equipment or storage area purposes in Commercial and Industrial districts, only if such enclosure is an expansion of an existing chain link slatted enclosure, is at the rear of the building or site, is not visible from public rights-of-way, and complies with the following:

- a. Enclosure may not be approved adjacent to a Residential or Mobile Home Park combining district or use.
- b. The enclosure shall screen the dumpsters, trash compactors or equipment.
- c. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate an enclosure.
- d. When feasible, sides and rear of the enclosure shall be landscaped.
- e. On-site parking shall meet ordinance requirements, except as provided in Section XI-10-54.15-3 of the Milpitas Municipal Code.

3) Above ground transformers, tanks and other exterior equipment in Commercial and Industrial districts, which are located at the rear of the building or lot and which comply with the following:

as far away as possible from Residential or Mobile Home Park combining districts or uses.

- h. Enclosures for noise-generating equipment (i.e. generators) may not be approved near Residential or Mobile Home Park combining districts or uses.

2) New chain link enclosures for trash/recycling, equipment or storage purposes in Commercial and Industrial districts, provided the enclosure is not visible from public rights-of-way. The following shall apply:

- a. Enclosure shall consist of vinyl clad chain link with or without matching vinyl slats. Coloring and use of slats shall be to the discretion of the Planning Commission Subcommittee.
- b. The enclosure shall not remove any trees or required parking.

3) Above ground transformers, tanks, and other exterior equipment in Commercial and Industrial districts and for conditional uses in Residential districts (except Hillside). The following shall apply:

- a. The equipment shall be set back from adjacent streets as least as far as the main building and shall be screened from view by dense shrubbery, masonry wall such as split face block or masonry finished to match the building, or other screening material utilizing colors and materials which complement the building. The Subcommittee shall have the discretion to approve vinyl clad chain link fencing with or without matching vinyl slats, depending on the visibility of the location.
- b. In all districts, on-site parking shall meet minimum standards.

- | | |
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| <ul style="list-style-type: none">a. Equipment shall not be approved adjacent to a Residential or Mobile Home Park combining district or use.b. Equipment shall be completely screened from view by dense shrubbery, masonry wall such as split face block or masonry finished to match the building, or other solid screening material utilizing colors and materials which complement the building. Chain link fencing with or without slats may not be approved unless it is an expansion of an existing approved chain link enclosure and it is not visible from public viewing points (see #2 above).c. On the street side of corner lots, the equipment and its screening must be set back at least as far as the main building.d. On-site parking shall meet minimum standards.e. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas municipal Code, may be approved to accommodate a tank, transformer or equipment.f. Installed height of the transformer, tank or equipment shall not exceed ten (10) feet. | <ul style="list-style-type: none">c. In Commercial and Industrial districts, no net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate a tank, transformer or other equipment.d. In Commercial and Industrial districts, installed height of the transformer, tank or equipment shall not exceed the building height. Exception: Equipment exceeding building height may be approved if it is proposed at the rear of the building, and the applicant can demonstrate with line-of-sight drawings that the equipment will not be seen from public viewing points.e. If adjacent to a Residential or Mobile Home Park combining district or use, installed height of the equipment shall not exceed six (6) feet.f. In Commercial and Industrial districts, generators may not be approved if located adjacent to a Residential or Mobile Home Park combining district or use. |
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42.11 Consideration of "S" Zone Pending Zoning Amendment

Upon the close of a public hearing before the Planning Commission on the question of an amendment to this Chapter to change property from one zone to another, and upon favorable report thereon by the Commission, the Commission may consider such matters and regulations as are set forth in Section 42. The Commission may conditionally impose such requirements and regulations upon the subject property as the Commission is authorized to impose by Section 42 and may conditionally grant "S" Zone Approval thereto; said requirements and regulations shall be imposed and said approval shall be granted upon the express condition that said property shall be rezoned in accordance with the specific recommendation of the Planning Commission relating to zoning and shall not take effect unless and until said property is rezoned in accordance with specific recommendations of the Planning Commission and until the ordinance amending this Chapter in accordance with the specific recommendation of the Planning Commission shall take effect. (Ord 38.636, 8/2/88)

UPDATE LOG:

(Ord 38.706, 7/16/96 - Amended Sections 42.02, 42.03, 42.05, 42.08 and 42.10)
(Ord. 38.716, 9/15/98 - Amended Sections 42.04-13, 42.05, 42.10-1, Added 42.10-02)

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Section 43 - TOD Transit Oriented Development Combining District

(Ord 38.759, 4/2/02)

43.01 Purpose and intent

The purpose of the Transit Oriented Development Combining District ("TOD") is to provide for land uses, land use densities and intensities and development standards that act to enhance and support transit and to locate such uses near rail transit stations. These provisions allow for a mix of goods and services within a convenient walk of the transit stations, encourage the creation of stable, attractive residential, commercial and industrial environments within the District and provide for a desirable transition to the surrounding conventional areas.

43.02 Applicability

The “-TOD” overlay can be combined with any zoning district on lands that are generally within a 2,000 foot walk from a rail transit station. If any of the regulations specified in the “-TOD” combining district differ from any corresponding regulations of any district with which the “-TOD” combining district is combined, then the provisions of the “-TOD” combining district shall govern.

43.03 Additional Conditional Uses

The following uses may be allowed on the ground floor of a mixed use or residential building if a Conditional Use Permit is granted by the Planning Commission:

43-03-1 Transit stations and parking.

43-03-2 Small-scale commercial uses—excluding Adult Businesses, as defined in Subsection 54.18, and drive-up or drive-in services—to serve residents and local pedestrian traffic and or transit users, such as dry cleaners, video rentals, day care centers and cafes.

43.04 Prohibited Uses

Vehicle oriented window service facilities are not allowed in the “-TOD” Combining District.

43.05 Development Standards

43.05-1 North Midtown “MXD-TOD” Area.

- a. Residential developments shall be a minimum of thirty-one (31) dwelling units per gross acre and shall not exceed forty (40) dwelling units per gross acre. The minimum number of residential units may be reduced for parcels in the North Midtown Area that are less than twenty thousand (20,000) square feet
- b. Residential building height shall not exceed four (4) stories and sixty (60) feet, including special architectural elements such as towers and spires.
- c. The maximum FAR for non-residential buildings in the “MXD” District is one hundred percent (100%, or 1.0).

43.05-2 South Midtown “R4-TOD” Areas.

- a. Residential developments shall be a minimum of forty-one (41) dwelling units per gross acre and shall not exceed sixty (60) dwelling units per gross acre.
- b. Residential building height shall not exceed five (5) stories and seventy-five (75) feet, including special architectural elements such as towers and spires.
- c. The maximum FAR for ground floor non-residential uses developed in conjunction with very high density multiple family residential in the “R4-TOD” District is fifty percent (50%, or 0.5).

43.06 Off-Street Parking

43.06-1 Total off-street parking required elsewhere in this Chapter may be reduced up to twenty percent (20%).

43.06-2 Developments within the North Midtown “R4-TOD” area may only apply the twenty percent (20%) reduction once a decision on the location and viability of the Northern BART station has been made by the City Council.

43.07 Landscape and Open Space Requirements for Residential Uses

When combined with “-TOD” there shall be no minimum open space requirements; however, adequate open space shall be provided to the approval of the Planning Commission through the Site and Architectural Review (“-S” Zone) process.

43.08 Additional Development Requirements

43.08-1 All developments within the “-TOD” Combining District shall, through the Site and Architectural (“-S” Zone) review process, incorporate measures that would encourage the use of transit, foot and bicycles, including, but not limited to:

- a. Retail shops and services that residents and employees use on a frequent basis, such as restaurants, cafes, exercise facilities, dry cleaners, day care, video rental and automated teller machines.
- b. Participation in the Valley Transportation Agency’s EcoPass or similar programs that support mass transit.
- c. Provision of bicycle facilities and showers—new office and employment uses only.

43.08-2 All improvements shall conform to the Midtown Specific Plan, including the Design Guidelines and Standards set forth in Chapter 8.

43.09 Exceptions to Standards

43.09-1 Exceptions to all but the density and floor area ratio standards (Subsections 43.05-1a, 43.05-1c, 43.05-2a and 43.05-2c) may be approved by the Planning Commission through approval of a Conditional Use Permit in accordance with the requirements of Section 57.

43.09-2 In addition to the required findings under Chapter 57, the Planning Commission must be able to make the following two additional findings for such exceptions:

- a. The exceptions meet the design intent identified within the Specific Plan and do not detract from the overall architectural, landscaping and site planning integrity of the proposed development.
- b. The exceptions allow for a public benefit not otherwise obtainable through the strict application of the specified standard.

Section 44 "MHP" Mobile Home Park Combining District

Section 44 Contents

- 44.01 Purpose
- 44.02 Principal Permitted Uses
- 44.03 Conditional Uses
- 44.04 Site Location Criteria
- 44.05 Yard Area and Dwelling Unit Density Requirements
- 44.06 Landscaping and Open Space Requirements
- 44.07 Automobile Parking and Circulation
- 44.08 Other Required Conditions

44.01 Purpose

The purpose of this District is to promote the expansion and diversification of the available housing opportunities existing within the City of Milpitas by the establishment of standards for the creation of planned mobile home parks.

These provisions will further encourage the creations of stable, attractive residential environments within the individual mobile home parks themselves and provide for a desirable transition to the surrounding conventional residential area.

The following regulations shall apply in the following Districts only -- "R1-6", "R2", "R3-20", "HS" -- with which may be combined the "MHP" District in addition to the regulations herein before specified therefor; provided, however, that if any of the regulations specified in this Section differ from any corresponding regulations specified in the Chapter for any District with which is combined an "MHP" district, then in such case the provisions of this Section shall govern. (Ord 38.634,)

44.02 Principal Permitted Uses

The following are the principal uses in the "MHP" District: (Ord 38.227, 6/20/72)

44.02-1 Mobile Home Park for Single Family Dwelling Units. (Ord 38.227, 6/20/72)

44.02-2 Common recreational facilities and structures. (Ord 38.227, 6/20/72)

44.02-3 Administrative offices for Mobile Home Park use. (Ord 38.227, 6/20/72)

44.02-4 Residential quarters for use by manager or other Park employees. (Ord 38.227, 6/20/72)

44.02- 5 Accessory uses normally incidental to a mobile home park, such as but not limited to coin operated laundry and car washing facilities which are accessible only through the internal park circulation system. (Ord 38.634,)

44.03 Conditional Uses

The following uses and facilities may also be permitted if a Conditional Use Permit is granted by the City Council upon recommendation by the Planning Commission provided they are found to be subordinate to the primary mobile home residential function and which are provided for the use and convenience of residents, resident's family, and guests of the Park. (Ord 38.634,)

44.03-1 Mobile home and mobile home accessory equipment sales provided said area has direct access from a public street and not through the internal street system of the park. (Ord 38.634,)

44.03-2 Deleted (Ord 38.634,)

44.03-3 Deleted (Ord 38.634,)

44.03-4 Personal service establishments such as but not limited to beauty parlors and barber shops. (Ord 38.634,)

44.03-5 Other uses which are in accord with the intent of this Section. (Ord 38.634,)

44.04 Site Location Criteria

Mobile Home Parks must be located abutting a major street so as to provide for direct access to and from said major street. "Major Street" shall mean a public street having a minimum for four (4) moving lanes in addition to area on both sides to accommodate on-street parking or six (6) moving lanes regardless of allowance for on-street parking. (Ord 38.3532, 4/1/75)

44.05 Yard Area and Dwelling Unit Density Requirements

The following minimum requirements shall be observed except where increased for Conditional Uses: (ord 38.227, 6/20/72)

44.05-1 Park Area:

Mobile Home Park sites shall not be less than twenty-five (25) contiguous acres. (Ord 38.227, 6/20/72)

44.05-2 Mobile Home Park dwelling unit density per gross acre:

Areas zoned Single-Family Residential 6,000 square feet per dwelling unit (R1-6) or Two-Family Residential (R2) shall not exceed six (6) mobile home dwelling units per gross acre.

Areas zoned Multiple-Family Residential 2,000 square feet per dwelling unit (R3-20) shall not exceed seven (7) mobile home dwelling units per gross acre.

Areas zoned Highway Service (HS) shall not exceed seven (7) mobile home dwelling units per gross acre.

Provided, however, that all of the above listed mobile home dwelling units densities may be increased up to a maximum of one (1) additional dwelling unit per gross acre upon the finding by the Planning Commission that the proposed development will consist of a superior functional and aesthetic design which exceed all or a portion of those standards contained within the adopted General Development Policy No. 2 -- Mobile Home Parks. (Ord 38.634,)

44.05-3 Building setbacks from parcel boundaries:

44.05-3.1 Abutting a public street thirty-five (35) feet.

44.05-3.2 Where the rear or side of an "MHP" zone

abuts a residential district, there shall be a rear or side yard or both of twenty-five (25) feet.

44.05-3.3 Abutting all other zoning districts -- fifteen (15) feet. (Ord 38.634,)

44.05-4 Mobile Home Individual yard Regulations:

Minimum yard requirements around individual mobile homes, accessory buildings, carports and awnings shall be determined by California Administrative Code, Title 25, Chapter 5. The Commission or Council may vary this requirement to accommodate innovative design arrangements (See General Development Policy No. 2; Mobile Home Parks). (Ord 38.227, 6/20/72)

44.05-5 Height Regulation:

No recreational and administrative building approved as a part of the mobile home park shall exceed those height regulations pertaining to the basic District with which the "MHP" is combined. (Ord 38.227, 6/20/72)

44.06 Landscaping and Open Space Requirements:

44.06-1 A minimum of twenty-five (25%) percent of the total park area (not including vehicular accessways and other non-recreational areas plus permanent buildings) shall be landscaped for recreational open space and this shall be shown on the Site Plan in detail for Planning Commission approval. (Ord 38.227, 6/20/72)

44.06-2 A community recreation center which possesses a floor area of twenty-five (25) square feet per mobile home unit but in no case less than a minimum of three thousand seven hundred fifty (3,750) square feet shall be provided and be centrally located within the Park. Space devoted to administrative offices, laundry or other non-recreational uses which may be developed in conjunction with the community center shall be in addition to the above minimum recreational floor space. (Ord 38.227, 6/20/72)

44.06-3 Whenever an entire park or portion of a park is proposed to be used as "family" occupancy the park must provide, subject to Planning Commission approval, additional play areas for children that are of a convenient size and separated from adult recreation areas. (Ord 38.227, 6/20/72)

44.06-4 Each unit shall be provided with a contiguous and permanently surfaced patio area exclusive of the mobile home pad

of not less than two hundred (200) square feet. (Ord 38.227, 6/20/72)

44.06-5 Each mobile home shall be maintained weed free. (Ord 38.227, 6/20/72)

44.07 Automobile Parking and Circulation:

44.07-1 The main access to a Mobile Home Park shall be from an abutting major or collector street. (See Site Location Criteria for definition). (Ord 38.227, 6/20/72)

44.07-2 The main entrance of a mobile home park shall consist of two (2) ten (10) foot travel lanes for ingress and an additional two (2) lanes for egress, separated by a landscaped median, a minimum of ten (10) feet in width and one hundred (100) feet in length. (Ord 38.227, 6/20/72)

44.07-3 An illuminated directory map shall be provided at all entrances out of the main travel way to the Park in such a manner as to be read by the driver of an entering vehicle without leaving his vehicle. Size and location shall be approved by the Planning Commission. (Ord 38.227, 6/20/72)

44.07-4 Additional access points may be allowed after review of specific location by the Planning Commission subject to minimum driveway width of thirty (30) feet at the property line. (Ord 38.227, 6/20/72)

44.07-5 All private roadways within the Park shall provide for twenty-five (25) feet in travel lane width and an additional ten (10) feet for each parking lane located along said roadway. (Ord 38.227, 6/20/72)

44.07-6 All private roadways shall be structurally designed for a minimum traffic index of five (5) and shall include concrete curbs and gutters. (Ord 38.227, 6/20/72)

44.07-7 Residential off-street parking shall be provided at a minimum of two and one-half (2-1/2) spaces per dwelling unit. One space shall be contiguous to the individual mobile home site and the additional space may be grouped into a centralized parking area if located within one hundred fifty (150) feet of the dwelling unit to be served. The remaining portion of the parking requirement is for boats, campers, travel trailers, Park maintenance equipment and similar large items providing for centralized areas to accommodate their storage.

The location of said areas shall be to the approval of the Planning Commission.

44.07-7.1 A parking space shall be a minimum of nine (9) feet in width.

44.07-7.2 Parking contiguous to the mobile home site shall be so designed as to assure that a parked automobile will not encroach into an access street and in no case be closer than fifteen (15) feet from a pedestrian walkway.

44.07-7.3 Parking contiguous to the community center will be provided at a ratio of one (1) space for each fifteen (15) mobile home dwelling units within the Park in addition to the above. (Ord 38.227, 6/20/72)

44.08 Other Required Conditions:

The following additional conditions shall apply in an "MHP" District:

44.08-1 All permitted and conditional uses proposed shall be required to submit Site and Exterior Architectural Plans to be reviewed for approval in conjunction with Planning Commission consideration of zone change application for "MHP" combining District. (Ord 38.227, 6/20/72)

44.08-2 Site and Architectural Approval shall be subject to consideration of those policies contained in the General Development Policy No. 2 -- Mobile Home Parks. (Ord 38.227, 6/20/72)

44.08-3 Mobile home park development within the City shall comply with applicable provisions of the California Health and Safety Code, relating to the maintenance, use and occupancy of mobile homes and the construction and operation of mobile home parks, as well as the regulations set forth in Title 25, chapter 5 of the California Administrative Code except when provisions of the Title call for more restrictive regulations. (Ord 38.227, 6/20/72)

44.08-4 The park operator shall be responsible for the maintenance of all park and lot landscaping. (Ord 38.227, 6/20/72)

44.08-5 Plants, shrubs and trees which die or otherwise become deteriorated shall be replaced with units of equivalent size to the then existing vegetation. (Ord 38.227, 6/20/72)

44.08-6 Approval of each Mobile Home Park combining district zone change is subject to the owner entering into a Maintenance

Agreement to the approval of the City Attorney prior to issuance of any City permit. (Ord 38.227, 6/20/72)

44.08-7 Each mobile home park operator shall notify the Building Division at least forty-eight (48) hours prior to hauling to or storage on or placement of a mobile home on a lot in a mobile home park for the purpose of enabling the Building Division to assure compliance with Section 18404 of the California Health and Safety code. (Ord 38. 227, 6/20/72)

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Section 45 "H" Hillside Combining District

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- 45.01 Findings, Purpose and Intent
 - 45.02 Establishment and Designation
 - 45.03 Maximum Allowable Densities and Minimum Lot Sizes
 - 45.04 Height Regulations
 - 45.05 Yard Requirements
 - 45.06 Crestline Zone of Protection
 - 45.07 Special Provisions for PUD's in Hillside
 - 45.08 Open Space Easements
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 - 45.17 Maximum Size of Residence, Accessory Structures, and Impervious Surface Coverage
 - 45.18 Grading Requirements
- 9/15/92

XI-10-45.01 Findings, Purpose and Intent

The City Council of the City of Milpitas finds and declares:

- 45.01-1 The hillsides which are a part of the City and within its urban planning area represent a unique scenic asset to the community and a part of the history and tradition of the community.
- 45.01-2 The inventory of open space and natural scenery in the City and County is rapidly diminishing.
- 45.01-3 The congestion of traffic, commerce, development and people may require a counterbalance of pleasant vistas bearing in mind preservation and conservation of the natural landscaping and open space while at the same time permitting orderly and regulated residential development.
- 45.01-4 Pleasant communities attract business, industry and people. They improve public morale and pride and encourage public support for safe, healthful and productive development.
- 45.01-5 Citizens have shown that they wish this community to be attractive as well as clean and safe and that they want to avoid hillside visual pollution. Therefore, it is necessary to create a special zoning district which insures an orderly and harmonious residential development that will minimize the amount of disturbance to the natural terrain.
- 45.01-6 If Milpitas is to avoid the hillside safety, ecological/environmental, and financial disasters, which have occurred elsewhere in California, seismic risk, geologic hazards, fire protection, groundwater protection, flood prevention and erosion control require the regulation of hillside development as to density, construction practices, building sites and landscaping.
- 45.01-7 That all environmental concerns be included in hillside development (in order to take into account nationally recognized Pacific Flyway Habitat designations and not to disturb nesting areas or resting areas).
- 45.01-8 The purpose of the "H" Hillside Combining District is to promote and encourage the orderly development of the hillside area of the City by the application of regulations and requirements established to meet the particular problems associated with development of hillside areas, including but not limited to geologic problems, slope, safe access and visibility. (Ord. 38.672, 9-15-92)

XI-10-45.02 Establishment and Designation

"H" Hillside Combining Districts shall be established only in conjunction with other districts. An "H" designation shall be required in areas designated in the adopted General Plan as "Hillside" and may be combined with "R1" Single-Family Residential.

The provisions of this section shall apply in the "H" Hillside Combining District, in addition to those conditions specified for the basic zone classification. Where there is a conflict between these regulations and the regulations specified in the basic zone, the provisions in this section shall prevail. (Ord. 38.672, 9-15-92)

XI-10-45.03 Maximum Allowable Densities and Minimum Lot Sizes

The following requirements shall apply in the "H" Hillside Combining District:

- 45.03-1 The average land area per dwelling unit is determined by calculating the average slope of the parcel and then using this figure in the slope density equation to get minimum average land area per dwelling unit.
- 45.03-2 The slope density equation. If the parcel has an average slope of ten (10) percent or less, the average land area per dwelling unit shall be no less than ten (10) acres. If the parcel has an average slope of fifty (50) percent or more, the minimum average land area per dwelling unit shall be no less than eighty (80) acres. If the parcel has an average slope of ten (10) percent to fifty (50) percent, the average land area per dwelling unit shall be determined by the following equation:

$$a = \frac{1}{0.121875 - 0.0021875 S}$$

Where: 'a' is the average land area per dwelling; and
's' is the average slope of the lot in percent

- 45.03-3 Average slope shall be based on existing contours as shown on aerial maps on file in the office of the City Engineer dated April 1964. Where slope cannot be directly determined by observation, the average slope will be determined by the formula:

$$S = \frac{100 \ I \ L}{A}$$

Where I is the contour interval in feet;
L is the combined length of the contour lines
in scale feet; and
A is the net area of the lot in square feet

Exhibit "B" is an example of the use of this formula.

- 45.03-4 The maximum number of dwelling units permitted in a subdivision shall be determined by dividing the gross land area by the average land area per dwelling unit, computed to the third significant figure, and then rounded to the nearest whole number.
- 45.03-5 Reduction of Density: The City may require a reduction in the number of dwelling units below the maximum otherwise permitted under this Section if the City determines that such reduction is necessary or appropriate by reason of site restrictions or geologic hazards.
- 45.03-6 Further Subdivision Prohibited: Upon recordation of a final subdivision or parcel map covering any site zoned "R1-H", no lots or parcels shown on such map may be thereafter further subdivided so as to increase the total density permitted under this Section for the entire subdivision or parcel depicted on the final map.
- 45.03-7 Exempted Lots: Any lot shown as a unit on a recorded subdivision or land division, or any lot otherwise legally created, is exempt from the density requirements set forth in this Section provided such lot was created prior to the effective date of the ordinance codified in this chapter. Any lot so exempted will not lose its exempt status if either of the following events takes place subsequent to the effective date of the ordinance codified in this chapter:
- a) A portion of the lot is exchanged for a portion of any adjoining lot, the result of which does not decrease the original square footage of the lot, or
 - b) The lot is enlarged by the addition of land from any adjoining parcel.
 - c) Under no circumstances shall the number of dwelling units be greater than the number permitted prior to any modification for lot line adjustment. (Ord. 38.672, 9-15-92)

- 45.03-8 Density Exception: Notwithstanding the density provisions of the "H" District set forth in XI-10-45.03, a commercial development which was approved prior to the October 15, 1992 effective date of the ordinance codified in this section may, upon site and architectural approval, pursuant to Section XI-10-45.03, be replaced with one less intensive single-family residential dwelling that complies with all other conditions of Section 45 and all other relevant provisions of the Municipal Code. (Ord. 38.732, 10-7-97)

XI-10-45.04 Height Regulations

- 45.04-1 Under no circumstances shall any main building on the west side of the crestline exceed a height of seventeen (17) feet and one (1) story (excluding basements) from the lowest finished grade to the highest ridgeline of the building.
- 45.04-2 Under no circumstances shall any main building on the east side of the crestline exceed a height of twenty-seven (27) feet and two (2) stories from the lowest finished grade to the highest ridgeline of the building.
- 45.04-3 Accessory structure(s) shall not exceed seventeen (17) feet and one (1) story from finished grade to the highest ridgeline of the building anywhere in the hillside. (Ord. 38.672, 9-15-92)

XI-10-45.05 Yard Requirements

For lands in the R1 residential zoning district, the following requirements shall apply:

- 45.01-1 All dwellings shall have a minimum side yard of forty (40) feet.
- 45.05-2 Minimum front yard setbacks shall be 25 feet when the average slope of the lot is less than sixteen (16) percent, or when the front yard slope does not exceed sixteen (16) percent; otherwise the minimum front yard setback shall be 40 feet.
- 45.05-3 The minimum rear yard setback for the principal dwelling shall be forty (40) feet. (Ord. 38.672, 9-15-92)

XI-10-45.06 Crestline Zone of Protection

- 45.06-1 The purpose of the crestline zone of protection is to preserve the natural quality of the crestline and the slopes immediately below, when viewed from the Valley Floor.

- 45.06-2 The crestline zone of protection is defined as the area westerly of the perceived crestline and between the perceived crestline and an elevation one hundred (100) feet below. In the area within three hundred (300) feet easterly of the crestline, structure heights shall be restricted so that no structure extends above the crestline site line.
- 45.06-3 The perceived crestline is the crestline identified when viewed from the three (3) closest viewpoints of those nine (9) shown on the zoning map and designated as "VP."
- 45.06-4 The land within the crestline zone of protection shall remain in a natural condition and structures, grading and non-native plant materials are prohibited. All fences constructed within the Crestline Zone of Protection shall be subject to review and approval by the Planning Commission.
- 45.06-5 In demonstrating compliance with the Crestline Zone of Protection, an applicant shall submit cross-sections from each of the three (3) closest viewpoints from their site. Each cross-section shall include the viewpoint, any proposed structure(s) on the applicants site, the perceived crestline, and the lower edge of the zone of protection. Each cross-section shall be drawn commencing from the closest viewpoint with lines projecting through the highest point of any and all structures. No structure may visually intrude into the "crestline zone of protection" area. Exception may be granted where development would not be visible from the three (3) closest viewpoints. (Ord. 38.672, 9-15-92)

XI-10-45.07 Special Provisions for PUD's in Hillside

- 45.07-1 When land in the Hillside is to be subdivided and is also approved as a PUD, the following rules shall apply in addition to those specified elsewhere in this chapter for PUD's.
- 45.07-2 There shall be no minimum lot size requirements for PUD's. Clustering of development for PUD's is encouraged and shall be located on not more than ten (10) percent of the total lot area that exists prior to any subdivision.
- 45.07-3 Land included in a PUD but not included in lots shall be held in common and shall be encumbered with an open space easement in favor of the City unless such common ownership and easement would be inconsistent with approved uses such as public streets or public utilities. (Ord. 38.672, 9-15-92)

XI-10-45.08 Open Space Easements

- 45.08-1 In any subdivision which is not approved as a PUD, at least fifty percent (50) of the gross area within the subdivision shall be encumbered with an open space easement in favor of the City. Side yard and front yard setback areas will not be allowed to be a part of nor encroach on the open space easement. Said easement shall be identified at the time of submittal of the tentative map.
- 45.08-2 Reconfiguration of the open space easement may be granted, at a public hearing, by the City Council provided that the area (net acreage) is not decreased.
- 45.08-3 No open space easement dedicated to the City within the "H" Hillside Combining District shall be abandoned by resolution of the City Council without a majority of those voting on the matter in a City election approving of such abandonment. The election shall be held at one (1) of the regularly scheduled election dates for general law cities. (Ord. 38.672, 9-15-92)

XI-10-45.09 Site and Architectural Approval

- 45.09-1 Purpose.
It is the policy of the City to review the proposed construction or expansion of single-family dwellings and certain accessory structures under circumstances where such structures might constitute an invasion of privacy, unreasonable interference with views, light and air, and create adverse impacts upon the aesthetic character of neighboring residential structures. The purpose of this Section is to establish standards and procedures to be followed with respect to the design review of single-family dwellings and certain accessory structures to ensure that new development occurs in a manner which is consistent with the objectives of this Chapter and the policies of the General Plan.

45.09-2 Applicability-Requirement for Site and Architectural Review.

In each of the following cases, no building permit shall be issued for the construction or expansion of a single-family structure or accessory structure in any "H" District, until such structure has received a site and architectural review approval by the Planning Commission and City Council pursuant to this Section:

- (a) Prior to any grading;
- (b) Prior to construction of any new structure; or
- (c) Prior to any modification that requires a building permit, any interior alteration, or any alteration or conversion where such alteration or conversion does not result in any exterior modifications to the existing structure beyond the installation of skylights in the roof, installation of new windows or doors, fireplaces or chimneys, or any other minor alteration which in the opinion of the Community Development Manager meets the intent of this Subsection.

45.09-3 Application Requirements-Public Hearing.

Site plan and building elevations, which portray as accurately as possible the ultimate development of the lot, shall be submitted to the City. The plans shall include all structures, grading, landscaping, colors and materials.

45.09-4 The applicant shall in addition propose a "building envelope" within which all development other than specified minor improvements such as fences (permitted by Section XI-10-45.13, Fences) and driveways shall be located. [Also see Sec. 54.11]

45.09-5 A public hearing on the site and architectural review application shall be required at the Planning Commission level only. The review before the City Council shall not be a public hearing. Provided however, that any modifications or addition onto an existing structure, on parcels twenty thousand (20,000) square feet or less, shall not require a review by either the Planning Commission or City Council but said modifications or addition must comply with the site and architectural guidelines contained in this Section.

45.09-6 Application Materials

Application for site and architectural review ("S" Zone Approval) shall be made, with the Community Development Department, on a form prescribed for this purpose.

The application shall include the following exhibits such as, but not limited to: Building envelope and open space plan

Existing topographic plan

Architectural plan(s)

Roof plan

Floor plan(s)

Line of sight-view restriction/obstruction analysis

Landscape plan

Crestline zone of protection plan, where appropriate

Grading plan

The application shall be accompanied by the payment of a processing fee(s), in such amount(s) as established by the City Council.

45.09-7 Site and Architectural Guidelines

The Planning Commission and City Council shall consider the following guidelines in its review process:

(a) Avoid Unreasonable Interference with Views and Privacy. The height, elevations and placement on the site of the proposed main or accessory structure, when considered with reference to the nature and location of residential structures on adjacent lots, will avoid unreasonable interference with views and privacy.

(b) Preserve Natural Landscape. The natural landscape will be preserved insofar as practicable by designing structures to follow the natural contours of the site and minimizing tree and soil removal.

(c) Minimize Perception of Excessive Bulk. The design of the proposed main and/or accessory structure(s) in relation to the immediate neighborhood should minimize the perception of excessive bulk.

(d) Impairment of Light and Air. The proposed main or accessory structure(s) shall not unreasonably impair the light and air of adjacent properties nor unreasonably impair the ability of adjacent properties to utilize solar energy.

(e) Grading. All grading shall be kept to an absolute

minimum and shall comply with the grading ordinance criteria. (Ord. 38.672, 9-15-92)

XI-10-45.10 Slope Planting

The face of all cut and fill slopes may be required to be planted and maintained with a ground cover as recommended by the geotechnical report in order to protect the slopes against erosion as soon as practical and prior to the final approval of the grading. This plant material shall be shown on the landscape plan. (Ord. 38.672, 9-15-92)

XI-10-45.11 Residential Driveways and Parking

- 45.11-1 Privately owned and maintained access from the public road to each single-family dwelling shall be a minimum of fourteen (14) feet in width. Turning radius shall be designed to meet the Fire Department's requirements.
- 45.11-2 Turnout space shall be provided on driveways over one hundred fifty (150) feet in length with a maximum spacing of one hundred fifty (150) feet if roadway is less than eighteen (18) feet wide.
- 45.11-3 Turnaround. All dwelling units shall provide an on-site area for vehicles to turn around if served by a driveway over one hundred fifty (150) feet in length to meet Fire Department's requirements.
- 45.11-4 Vertical Clearance. All privately owned and maintained roads and drives shall assure a minimum fourteen (14) foot vertical clearance.
- 45.11-5 There shall be provided at the time of erection of any dwelling at least two (2) permanently maintained parking spaces on the same lot with the dwelling, for each dwelling unit. Said parking spaces shall be not less than ten (10) feet wide and twenty (20) feet long with adequate provisions for ingress and egress.
- 45.11-6 Private parking may be required to be located to the rear of the front setback line. Criteria used to determine need for parking to be located behind the front setback line shall be based on providing safe access which is harmonious with adjacent natural land slope, and structures existing and proposed.
- 45.11-7 The design of the driveway and parking areas shall consist of an all weather surface conforming to Section II-13-18, Paving Standards), and Section XI-10-54.03, Improvement of: Parking Areas, Auto Sales Areas and Loading Areas, of this code.

45.11-8 The Planning Commission and City Council may grant exceptions to the above requirements pursuant to the guidelines set forth in Subsection 45.09-7, Site and Architectural Guidelines, of this Section. (Ord. 38.672, 9-15-92)

XI-10-45.12 Non-Residential Off-Street Parking

Off-street parking shall be provided on-site for all nonresidential uses. The number and design of parking spaces shall be in accordance with Section XI-10-53, Off-Street Parking Regulations, and Section XI-10-54.03, Improvement of: Parking Areas, Auto Sales Areas and Loading Areas). (Ord. 38.672, 9-15-92)

XI-10-45.13 Fencing

Fencing on hillside lots shall be minimized and shall be of an open variety, except fencing around the immediate vicinity of each house. Fencing criteria will be found in Section XI-10-54.11, Fences. (Ord. 38.672, 9-15-92)

XI-10-45.14 Recreation Courts

45.14-1 Grading for tennis courts and other recreation courts shall not exceed six (6) feet of fill or twelve (12) feet of cut and fill. A site development application for a tennis or other recreation court which proposes grading in excess of the limits of this Chapter may be approved by the City upon finding that the excess cut or fill:

- (a) Will not result in slopes prone to landslides or soil creep;
- (b) Can be landscaped and/or contours rounded to render the cut or fill inconspicuous when viewed from off the site; and
- (c) Can be properly drained according to methods approved by the Building Division.

45.14-2 Screening. Recreation courts shall be landscaped and screened so as to be unobtrusive from off-site. The structure will not be permitted unless this screening can be accomplished without interfering with the function of the structure.

45.14-3 Color. All surface and retaining walls shall be colored in natural tones and screened as appropriate so that the court is not conspicuous when viewed from off-site. (Ord. 38.672, 9-15-92)

XI-10-45.15 Outdoor Lighting

45.15-1 Tennis-Recreation Courts. No artificial lighting shall be permitted for tennis and other recreation courts.

- 45.15-2 Swimming Pools and Spas. Artificial lighting of swimming pools and spas shall be permitted only under the following conditions:
- (a) Light(s) are placed beneath the surface of water in the pool or spa to illuminate the water;
 - (b) Other exterior lights used to illuminate the surrounding area;
 - (c) Light(s) use the minimum wattage which will safely illuminate the area;
 - (d) No direct light is cast beyond the immediate area of the pool or spa; and
 - (e) No light sources are directly visible from off the site.
- 45.15-3 Outdoor Lighting-General. Outdoor lighting should use the minimum wattage lights which will safely illuminate the area. Outdoor light sources shall be shielded so as not to be directly visible from off-site. This section does not pertain to motion-induce/activated or motion-sensor security type lights. (Ord. 38.672, 9-15-92)

XI-10-45.16 Underfloor Clearance

All new single-family main structures and accessory buildings, or additions thereto, shall be designed to follow the slope of the site so as to reduce the clearance between ground-floor levels and finish grade to not more than five (5) feet. The underfloor clearance shall not be enclosed. The Planning Commission and City Council may grant exceptions to this requirement pursuant to the guidelines set forth in Subsection 45.09-7 of this Section. (Ord. 38.672, 9-15-92)

XI-10-45.17 Maximum Size of Residence, Accessory Structures, and Impervious Surface Coverage

- 45.17-1 Purpose and Intent.
- The purpose and intent of limiting the amount of impervious surface coverage allows for the site and area to remain in its natural setting, as much as possible, without incorporating unnatural man-made features. Impervious surfaces also increase storm water runoff, which is to be considered in the design of drainage systems.

45.17-2 Definition.

"Impervious surfaces" are meant to include surfaces that will not allow or will greatly reduce the penetration of water into the ground. Impervious surfaces include the following: concrete, asphalt, bricks, paving stones, swimming pools, "turf stones," plastic sheeting, compacted gravel and rock areas, and similar surfaces. Impervious surfaces shall also include any and/or accessory structures located on a specific site.

(The City Council, on Oct. 18, 1994, interpreted that wood decks are considered impervious surfaces; however, that second-story balconies are OK. 1998: "grass-pave"-not turf block-tennis courts are OK)

45.17-3 On parcels less than three (3) acres, the amount of impervious surface on the site is limited to eight thousand (8,000) square feet or ten (10) percent of the total lot area whichever is greater (including the building footprint). The maximum size of the main residence shall not exceed six thousand (6,000) square feet.

45.17-4 On parcels three (3) acres or greater, the amount of impervious surface on the site is limited to ten (10) percent of the total lot area (including the building footprint). Under no circumstances shall the impervious surface coverage exceed thirty thousand (30,000) square feet. The maximum size of the main residence shall not exceed ten thousand (10,000) square feet.

45.17-5 The maximum size of an accessory structure shall not exceed one thousand two hundred (1,200) square feet. (Ord. 38.672, 9-15-92)

XI-10-45.18 Grading Requirements

45.18-1 Purpose and Intent.

The intent of this section is to regulate use, development and alteration of land in hill areas so that essential natural characteristics such as land form, vegetation and wildlife communities, scenic qualities, and open space can substantially be maintained; to preserve unique and significant geologic, biologic, and hydrologic features of public value; to encourage alternative approaches to conventional hillside construction practices by achieving land use patterns and intensities that are consistent with the natural characteristics of hill areas such as slope land form, vegetation and scenic quality. It is further the intent of this section to protect predominant views of and from hill areas in order to maintain the identity, image and environmental quality of the City; and to achieve land

use densities that are in keeping with the General Plan.

45.18-2 Definition.

"Grading" shall mean an excavation or fill, or the stockpiling or any combination thereof, or the conditions resulting from any excavation or fill. All grading quantities shall be measured in their compacted state.

45.18-3 Design Standards and Requirements.

(a) Grading will "blend" in with the natural land forms and native vegetation to the maximum extent feasible.

(b) No grading cut or embankment with a slope greater than three (3) feet horizontal to one (1) foot vertical shall be located adjacent to a publicly maintained right-of-way. The applicant shall provide suitable guarantees, satisfactory to the Planning Commission, for landscaping and perpetual maintenance, at no cost to the City, of all slopes greater than fifteen (15) feet in total elevation.

(c) Within six (6) months, or such other period established by the Planning Commission, after the commencement of grading activities, all graded areas not covered by an impervious surface shall be stabilized in such manner as shall be approved by the Community Development Manager.

(d) Landscaping coverage and stabilization of graded slopes shall be selected and designed to be compatible with surrounding natural vegetation or to replace removed natural vegetation and should recognize climatic, soil and ecologic characteristics of the region. Plant materials that require excessive water after becoming established should be avoided. (Refer to illustrations.)

(e) Trees which have a six (6) inch or greater diameter trunk size at a point three (3) feet above grade shall not be removed. The location of all such trees shall be shown on all plans submitted for approval. The Planning Commission, upon an application of an "S" Zone application approval, shall have the power to authorize removal, relocation, or replacement if the applicant can show that such requirement is unreasonable as applied to his particular property. If the removal is permitted, the replacement of any trees removed pursuant to this section shall be at a five to one (5:1) ratio.

(f) The overall shape, height, grade or any cut-or-fill slopes shall be developed in concert with existing natural contours and scale of the natural terrain of a particular site. (Refer to illustrations.)

(g) Where two cut-or-fill slopes intersect, the intersection shall be horizontally rounded and blended. (Refer to illustrations.)

- (h) Where any cut or fill slopes intersect the natural grade, the intersection of each slope shall be vertically and/or horizontally rounded and blended with the natural contours so as to present a natural slope appearance. (Refer to illustrations.)
- (i) Provide sites which fit into the terrain and allow for minimal amount of grading. Grading of any area of a site with a natural slope greater than forty (40) percent shall be prohibited.
- (j) Stepped building foundations shall be required to minimize grading on building pads. (Refer to illustrations.)
- (k) Streets shall be designed to generally follow the natural contours and land form in order to minimize cut and fill. Exposed walls and fences facing roadways and retaining walls shall be no greater than six (6) feet in height. Crib walls fencing roadways shall be no greater than fifteen (15) feet in height. (Refer to illustrations.)
- (l) Structures shall be designed to fit with the contours of the hillside and relate to overall form of the terrain. Structures shall be designed to fit into the hillside rather than altering the hillside to fit the structure. (Refer to illustrations.)

45.18-4 Development Plan Review Procedures

To further the specific purposes of this chapter, the following procedures are established:

- (a) Development Plan With Grading Under Five Hundred (500) Cubic Yards. Where the aggregate volume of grading on any site or contiguous group of sites is under five hundred (500) cubic yards, the Community Development Manager shall review the proposed Grading Plan. If the plan is found to be in conformance with the provisions of this chapter, the Grading Plan shall be approved. In approving the plan, such conditions as are reasonably necessary to ensure compliance with the objectives of the chapter may be imposed.
- (b) Development Plan With Grading in Excess of Five Hundred (500) Cubic Yards. Where the aggregate volume of grading exceeds five hundred (500) cubic yards but is under one thousand five hundred (1,500) cubic yards, the Planning Commission shall review the proposed Grading Plan. If the plan is found to be in conformance with the provisions of the chapter, the Grading Plan shall be approved. In approving the plan, such conditions as are reasonably necessary to ensure compliance with the objectives of this chapter may be imposed. On receipt of the recommendations of the Planning staff, the Planning Commission shall approve or deny the application.

(c) Development Plan With Grading in Excess of One Thousand Five Hundred (1,500) Cubic Yards. Where the aggregate volume of grading exceeds one thousand five hundred (1,500) cubic yards, the Planning Commission shall review the proposed Grading Plan and recommend approval or denial to the City Council. If approval is recommended, such conditions as are reasonably necessary to secure substantially the objective of this chapter may be included. On receipt of the recommendations of the Planning Commission, the City Council shall approve or deny the application.

45.18-5 Grading Plan Requirements. Wherever proposed grading in the hillsides exceeds five hundred (500) cubic yards, the applicant shall submit grading plans prepared by a licensed Civil Engineer. Said grading plans shall include, but not be limited to, the following:

- (a) Property lines and accurate contours of existing and proposed elevations;
- (b) Cross-sections taken through at least two (2) planes normal to each other. Horizontal and vertical depiction's shall be made in the same scale;
- (c) Quantities of fill and excavating proposed in cubic yards;
- (d) Location of all existing and proposed structures; and
- (e) Location of existing trees which have a six (6) inch or greater trunk diameter at a point three (3) feet above grade, and details of the measures proposed to conserve such trees. (Ord. 38.672, 9-15-92)

(Ord. 38.672, 9/15/92 - This Section 45 was amended in its entirety)

(Note included in section 45.17-2 regarding impervious surface interpretation)

Ord. 38.732, 10-7-97 - Added Section 45.03-8

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Section 46 - 00 Gateway Office Overlay Combining District

(Ord. 38.759, 4/2/02)

46.01 Purpose

The purpose of the Gateway Office Overlay Combining District (“-00”) is to

provide for higher intensity, Class A office development at gateways to the City of Milpitas. Uses other than Class A offices, shall be permitted or shall require use permit approval as applicable for the underlying zoning district.

46.02 Applicability

The “-OO” overlay shall be combined only with the “C2” or the “CO” districts. However, if any of the regulations specified in the “-OO” combining district differ from any corresponding regulations of any district with which the “-OO” District is combined, then the provisions of the “-OO” combining district shall govern.

46.03 Development Standards

The following standards apply only to Class A offices; all other permitted or conditional uses shall conform to the development standards of the underlying zoning district.

46.03-1 Building Height.

- a. Buildings shall not exceed six (6) stories and eighty-five (85) feet in height.
- b. A conditional use permit may be approved by the Planning Commission for buildings that exceed this standard up to a total height of eight (8) stories and one hundred fifteen (115) feet in height for exceptional architecture and aesthetic merit.

46.03-2 Floor Area Ratio. The maximum Floor Area Ratio (FAR) is one hundred fifty percent (150% or 1.5).

46.03-3 Front and Street Side Setbacks.

- a. The maximum front and street side setback shall be ten (10) feet from back of sidewalk. There is no minimum building setback.
- b. Where a public easement prevents a building from being located in at its required maximum setback, the building shall be located as close to the back of said easement as is possible.
- c. The building shall be parallel to the street and its main entrance shall face the street.

46.04 Off-Street Parking Requirements

For Class A office buildings there shall be at least three and three tenths (3.3) parking stalls per one thousand (1,000) square feet of gross floor area.

46.05 Landscape and Open Space

46.05-1 Each Class A office building within the “-OO” combining district shall provide an outdoor open space or plaza that is designed in accordance with the Guidelines set forth in the Midtown Specific Plan.

46.05-2 An area no less than ten percent (10%) of the Class A office site area shall be developed as useable open space. This can include plazas, courtyards, pedestrian promenades, balconies, roof decks, and landscaped open space.

46.06 Additional Development Requirements

Development within the “-OO” combining district must incorporate the following measures to ensure an attractive, landmark quality entry image to Milpitas, and encourage the use of alternative modes of transportation:

46.06-1 Adherence to the design guidelines of the Midtown Specific Plan, which provide for an attractive street presence of the building, stepped buildings to orient the building mass to the main street frontage.

46.06-2 Participation in the Valley Transportation Agency’s EcoPass or similar programs that support mass transit.

46.06-3 Initiation or participation in a transportation management program.

46.06-4 Provision of secure and weather protected bicycle parking and showers for employees.

46.07 Exceptions to Standards

43.07-1 Exceptions to all but the floor area ratio standards (Subsections 46.03-2) may be approved by the Planning Commission through approval of a Conditional Use Permit in accordance with the requirements of Section 57.

43.07-2 In addition to the required findings under Chapter 57, the Planning Commission must be able to make the following two additional findings for such exceptions:

- a. The exceptions meet the design intent identified within the Specific Plan and do not detract from the overall architectural, landscaping and site planning integrity of the proposed development.
- b. The exceptions allow for a public benefit not otherwise obtainable through the strict application of the specified standard.

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Section 53 Off-Street Parking Regulations

Section 53 Contents

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53.01 Purpose and Intent

The following off-street parking requirements are regulations which are established in order to achieve, among others, the following purposes:

To establish minimum requirements for the off-street parking of motor vehicles in accordance with the use established on the property,

To relieve congestion on streets, and to provide more fully for movement of traffic, maneuvering of emergency vehicles or street maintenance equipment,

To protect neighborhoods from vehicular traffic congestion generated by the adjacent non-residential uses of land,

To promote the general welfare and convenience and prosperity of residential, commercial and manufacturing developments which depend upon the availability of off-street parking facilities.

53.02 Scope of Regulations

Off-street parking spaces shall be provided in accordance with the schedule in Subsection 53.23 as a conditions precedent to the occupancy of an institutional, commercial or manufacturing use and in conformance with other provisions of this chapter:

- a) Whenever a building is constructed, or
- b) Whenever an existing building or use is altered, resulting in an increase in floor area, seating capacity or other units of measurement specified herein for required parking or loading facilities, or
- c) Whenever the use of an existing building is changed to a use requiring fifty (50) percent or more off-street parking spaces, as determined by the provisions of Section 53.23.

53.03 Continuation of Off-Street Parking Spaces

All off-street parking spaces shall continue unobstructed in operation, shall not be used for vehicle repair work of any kind unless within a building, and shall not be reduced below the required size as long as the main use remains, unless an equivalent number of spaces is provided for said use in another approved location. This does not apply to those parking spaces which are established on a voluntary basis which are in excess of the requirements of this Chapter.

53.04 Permissive Parking Facilities

Nothing in this Chapter shall prevent the voluntary establishment of off-street parking facilities in excess of the requirements of this Chapter to serve any existing use of land or buildings, provided that all regulations herein governing the location, size and access design, improvement and operation of such facilities are adhered to.

53.05 Mixed Occupancies

In the case of two (2) or more uses in the same building, the total requirements for off-street parking facilities shall be the sum of the requirements for the several uses computed separately. Off-street parking facilities for one (1) use shall not be considered as providing required parking facilities for any other use, except as hereinafter specified in Section 53.07 for joint use.

53.06 Uses Not Specified

In the case of a use not specifically mentioned in Section 53.23, the requirements for off-street parking facilities shall be determined by the Commission based on uses which create similar demands for off-street parking spaces. The Commission may draw upon the experience of other local cities to make their decision. (Ord 38.665, 10/29/91)

53.07 Joint Use

The Commission may authorize the joint use of parking facilities by the following uses or activities under the following conditions:

- a) Up to fifty (50%) percent of the parking facilities required by this section for a church, theater or bowling alley may be supplied by the off-street parking facilities provided by certain other types of buildings or uses specified in Section 53.07(c). (Ord 38.665, 10/29/91)
- b) Up to fifty (50%) percent of the off-street parking facilities required by this section for any building or use specified under (c) below may be supplied by the parking facilities provided for uses specified in Section 53.07(d).
- c) For the purposes of this section, the following uses are considered as day-time uses; banks, business offices, retail stores, personal service shops, household equipment or furniture shops, clothing or service shops, manufacturing or wholesale buildings and other similar primarily day-time uses when authorized by the Commission.
- d) For the purposes of this section, the following uses are considered as night-time or Sunday uses; auditoriums incidental to a public or private school, churches, bowling alleys, theaters and other similar primarily night-time uses when authorized by the Commission.
- e) Conditions required for joint use:

- 1) The building or use for which application is being made to utilize the off-street parking facilities provided by another building or use, shall be located within three hundred (300) feet of such facilities.

- 2) The applicant shall show that there is no substantial conflict in the principal operating hours of the two (2) buildings or uses for which joint use of off-street parking facilities is proposed.

- 3) A properly drawn legal instrument, executed by the parties concerned for joint use of off-street parking facilities, duly approved as to form and manner of execution by the City Attorney and recorded with the County Recorder . Joint use parking privilege shall continue in effect only so long as such an instrument, binding on all

parties, remains in force. If such instrument becomes legally ineffective, then parking shall be provided as otherwise required by this Chapter. (Ord 38.665, 10/29/91)

53.08 Required Improvements

All parking areas and access driveways shall have a smoothly graded, stabilized and dustless surface with adequate drainage so that injury will not be caused to adjacent properties. Bumper guards or curbs shall be provided in order to define parking spaces or limits of paved areas.

Also refer Section 54.03 of this Chapter for Improvement of Parking Areas.

53.09 Screening and Landscaping

All open automobile parking areas which abut upon a public street right-of-way shall provide landscaping to a depth of at least ten (10) feet of said street right-of-way and of any adopted plan line, with openings for walkway or drive purposes. Each landscaped planter in said parking facility shall be contained with a six (6) inch raised concrete curb (extruded curbing not permitted). Installation of an irrigation system shall be provided for in each planter area. (Ord 38.665, 10/29/91)

53.10 Lighting

All lights used to illuminate a parking area shall be designed, located and arranged so as to reflect the light away from any street and any adjacent premises.

53.11 Signs

Directional signs are permitted in parking areas in accordance with the adopted Sign Ordinance.

53.12 Fencing

A solid masonry wall a minimum height of six (6) feet shall be required on all common property lines when any parking area is established abutting residentially zoned property or property shown on the adopted general Plan as being Residential. The architectural design of said wall shall be to the approval of the Planning Commission.

53.13 Sales, Storage and Advertising

The sale or storage of merchandise in permissive parking areas may be allowed by the Planning Commission as provided for in section 42 of this Chapter and subject to such reasonable conditions as may be deemed necessary by the Commission to insure adequate parking, access and circulation.

In no event shall any off-street parking space (permissive or otherwise) or lot be used for the stopping, standing or parking of any vehicle(s) for either the purpose of selling such vehicle (excluding an approved car sales lot), or advertising any other property, services or products on said vehicle. (Ord 38.665, 10/29/91)

53.14 Compact Stalls

53.14-1 For parking areas and garages containing ten (10) or more stalls serving the following industrial uses within the industrial zoning districts, up to forty (40%) percent of the required and non-required stalls may be designed as compact stalls to accommodate compact cars:

- a. Research and Development (R&D) facilities
- b. Manufacturing plants
- c. Warehouse/distribution facilities
- d. Other industrial uses deemed appropriate by the Planning Commission.

(Ord. 38.675, 10/20/92, Ord. 38.708, 08/06/96)

53.14-2 Each stall shall be legibly marked "compact stall" or "small car" on the stall surface. Compact stalls may be used only for the above listed buildings and uses and only within the Industrial zoning districts. (Ord. 38.708, 08/06/96)

53.15 Bicycle or Motorcycle Spaces

Any existing or proposed parking facility may utilize, on a substitution basis, on-site parking spaces for bicycle or motorcycle spaces. a) Said bicycle spaces shall be raised a minimum of six (6) inches from grade of the adjacent parking facility.

b) One parking space may be omitted for each eight (8) bicycle spaces provided.

c) One parking space may be omitted for each two (2) motorcycle spaces provided.

d) Bicycle spaces shall measure at least two (2) feet by seven (7) feet and shall be located in groups of four (4) and shall be of the following three types:

- 1) a rack which secures the frame, or
- 2) an enclosed bike locker, or

3) a fenced, covered, locked or guarded bike storage area.

e) Motorcycle spaces shall measure four (4) feet by eight (8) feet and shall be provided with adequate unobstructed maneuvering areas to permit easy access to the space.

f) In no instance shall credit for motorcycle or bicycle parking or combination thereof exceed five (5%) percent of the total required parking spaces.

(Ord 38.665, 10/29/91)

53.16 Parking Standards In Other Sections

The Parking standards for projects located in the "R4" or "MXD" Districts and/or the "TOD" or "-OO" Combining Districts are specified in Sections 8 (R4), 38 (MXD), 43 (-TOD) and 46 (-OO) respectively. (Ord 38.759, 4/2/02)

53.17 Parking Stall Location

Each automobile stall shall be so located that no automobile is required to back onto any public street or sidewalk to leave the parking stall, parking bay or driveway except from a lot in an "R2" or more restrictive zone containing not more than two (2) dwelling units.

53.18 Spaces for Physically Disabled

Parking spaces for the physically disabled shall comply in all respects with the requirements of Title 24 of the California Code of Regulations (State Building code) or Federal law, where such prevails over State law. (Ord 38.665, 10/29/91)

53.19 Markings and Modifications to Lots and Spaces

The location of each parking space shall be identified and maintained by surface markings or other effective means, so as to be readily identifiable at all times.

Site and Architectural approval, as provided for in Section 42 of this Chapter, shall be required for any construction of new parking lots. Modifications to existing lots and spaces, including restriping or elimination of spaces, shall be subject to the provisions of Section 42.10 of this Chapter. (Ord 38.665, 10/29/91; Ord 38.716, 9/15/98)

53.20 Tandem Spaces

Tandem spaces shall not be counted toward meeting the requirements for off-street parking.

53.21 Measurement Standards and Definitions

For the purpose of determining off-street parking requirements, the following definitions and standards shall apply:

- a) Gross Floor Area (GFA): The total of all the floors measured from the interior faces of the building, and outdoor areas used for retail purposes.
- b) Net Floor Area (NFA): Net floor Area shall mean the Gross Floor Areas less twenty (20%) percent.
- c) Seat: The number of seating units installed or indicated, or each twenty-four (24) lineal inches of benches, pews, or space for loose chairs or similar seating facilities.
- d) Employees: The maximum number of employees on the principal shift.
- e) Fractional Measurements: When units or measurements determining the number of required off-street parking spaces result in a requirement of fractional space, any fraction up to and including three-quarters (3/4) shall be disregarded and fractions over three-quarters (3/4) shall require one (1) off-street parking space.
(Ord 38.665, 10/29/91)

53.22 Parking Table: Angles and Dimensions

| | A | B | C | D | E |
|-------|-------------|-------------|-------------|-------------|---------------------|
| Angle | Stall Width | Stall Depth | Aisle Width | Aisle Width | Curb Length per Car |
| | | | 1 Way | 2 Way | |

Mid Size/Standard Size:

| | | | | | |
|-----|------|-------|-----|-----|-------|
| 0° | 8.5' | 8.5' | 12' | 16' | 22' |
| | 9' | 9' | 12' | 16' | 22' |
| 45° | 8.5' | 18.5' | 12' | 22' | 12' |
| | 9' | 19.5' | 12' | 22' | 12' |
| 60° | 8.5' | 19.5' | 18' | 22' | 9.5' |
| | 9' | 21' | 18' | 22' | 10.5' |
| 90° | 8.5' | 18' | 25' | 25' | 8.5' |
| | 9' | 18' | 25' | 25' | 9' |

Compacts: (See Section 53.14)

| | | | | | |
|-----|------|------|-----|-----|------|
| 0° | 7.5' | 7.5' | 12' | 15' | 17' |
| 45° | 7.5' | 16' | 13' | 20' | 8.5' |
| 60° | 7.5' | 17' | 15' | 20' | 8.5' |
| 90° | 7.5' | 15' | 20' | 20' | 7.5' |

(Ord 38.675, 10/20/92)

53.22-1 Parking Layout Diagrams

- 53.22-2 Vehicle Overhang
Vehicles may overhang two (2) feet into any landscape area or private walkway if the walkway is a minimum six (6) feet in width, but in no event shall the overhang be permitted within any public right-of-way. (Ord 38.665, 10/29/91)

53.23 Parking Schedule

- 53.23-1 Residential Land Uses
- .1 Single-family, duplexes and multi-family residences -- Refer to residential districts in this Chapter.
 - .2 Dormitories, sororities and fraternities -- 1 sp/room or living unit.
- 53.23-2 Commercial Land Uses
- .1 Hotels, motels -- 1 sp/guest room or unit plus 2 sp/manager unit.
 - .2 Clubs and lodges -- 1 sp/200 Sq. Ft. GFA.
 - .3 Office buildings and business services (excluding financial institutions) -- 1 sp/200 Sq. Ft. NFA for 1 st floor plus 1 sp/400 Sq. Ft. GFA for each upper floor. (Ord 38.530, 7/21/81)
 - .4 Shopping goods, retail, convenience goods, personal services and repairs, except furniture stores, restaurants, service stations and car washes -- 1 sp/200 Sq. Ft. GFA for 1 st floor plus 1 sp/300 Sq. Ft. for each upper floor.
 - .5 Furniture stores and other bulky item retail stores -- 1 sp/350 Sq. Ft. GFA.
 - .6 Restaurants (table or counter service) -- For indoor and outdoor seats, 1 sp/3 seats (all seats including those in the waiting area) and an additional ten (10%) percent for employee parking. (Ord 38.675, 10/20/92)
 - .7 Restaurants which are of the fast food or take-out type -- 1 sp/2.5 seats for the seating or table/dining area (indoor and outdoor) plus 1 sp/50 Sq. Ft. NFA for the ordering or take-out area, not the seating or table/dining area. (Ord 38.665, 10/29/91)
 - .7-1 Window service or Drive-thru -- Queuing for five (5) vehicles which do not interfere with any on-site parking spaces (to be combined with but not limited to categories 53.23-2.6 or 53.23-2.7, when window service is provided). (Ord 38.665, 10/29/91)
 - .7-2 Drinking establishments, nightclubs, bars, cocktail lounges, discos or similar uses with or without entertainment - 1 sp/30 Sq. Ft. GFA. (Ord 38.665, 10/29/91)
 - .8 Bowling alleys including incidental accessory uses (eating and drinking, billiards, etc.) -- 6 sp/alley or lane.
 - .9 Day care schools -- 1 sp/classroom or 1 sp/500 Sq. Ft. GFA.
 - .10 Service stations with lube bays -- 3 sp/lube bay.
 - .11 Service stations without lube bays -- 1 sp/200 Sq. Ft.

GFA of building area.

.12 Car washes -- 1 sp/200 Sq. Ft. GFA of building area and reservoir space outside of building equal to 2 times the maximum capacity of facility.

.13 Mortuary, funeral parlor -- 1 sp/4 seats and 1 sp/employee.

.14 Financial institutions (banks, savings and loans, etc.) -- 1 sp/180 Sq. Ft. GFA for each floor. (Ord 38.530, 7/21/81)

.15 Automobile service, repair garage, etc. -- 3 sp/service bay, excluding using the service bay. In addition to the service bay requirement, any retail, office or storage/warehouse space within the facility shall utilize that criteria found in other subsections of this Section for those functions. (Ord 38.665, 10/29/91)

53.23-3 Industrial Uses

.1 Manufacturing plants, warehouses or storage, heavy industrial, distribution or general manufacturing -- 1 sp/1500 Sq. Ft. GFA. (Ord 38.665, 10/29/91)

.2 Wholesale uses -- 1 sp/500 Sq. Ft. GFA. (Ord 38.665, 10/29/91)

.3 Research and Development uses, uses oriented toward the "high tech" industries, or uses which have a high employee demand -- 1 sp/300 Sq. Ft. GFA. (Ord 38.665, 10/29/91)

.4 Office space within an industrial building (to be combined with categories 1 and 2 above) -- 1 sp/350 Sq. Ft. GFA. (Ord 38.546, 5/ /82)

53.23-4 Medical Buildings

.1 Medical and dental offices -- 1 sp/225 Sq. Ft. GFA for each floor.

.2 Hospitals -- 1 sp/bed or 1 sp/220 Sq. Ft. GFA, whichever is greater.

.3 Convalescent homes -- 1 sp/2 beds or 1 sp/1000 Sq. Ft. GFA, whichever is greater.

53.23-5 Public Buildings

.1 Auditoriums and theaters -- 1 sp/4 seats.

.2 Museums and libraries -- 1 sp/400 Sq. Ft. GFA for each floor.

.3 Public utilities - 1 sp/400 Sq. Ft. GFA for each floor.

.4 Stadiums and arenas -- 1 sp/4 seats.

.5 Churches -- 1 sp/5 seats in the sanctuary.

- 53.23-6 Child Day Care Uses
.1 Single family, duplexes and multi-family residences -- shall be the same number of spaces required in residential districts. (Ord 38.702, 8-15-95)
.2 Day care facilities serving more than six children -- 1 sp/1.5 employees. (Ord 38.702, 8-15-95)
.3 Schools other than day care centers -- 1 sp/classroom or 1 sp/500 sq. ft. gross floor area. (Ord 38.702, 8-15-95)
- 53.23-7 Loading/Unloading Child Day Care Uses
Day care facilities -- 1 sp/6 children up to 5 spaces and thereafter 1 sp/10 children. Driveways, garage aprons and street frontage may be counted if appropriate permits are first received when calculating spaces for day care homes. Tandem spaces are prohibited. (Ord 38.702, 8-15-95)
- 53.23-8 Exceptions for Child Day Care Requirements
The parking and loading/unloading space requirements for day care facilities included in Section XI-10-53.23-6 may, in the Planning Commission's discretion, be reduced, based on an empirical study (provided by the applicant) which establishes no adverse effects will occur as a result. The required number of loading/unloading spaces may be reduced without a study by one (1) space for each employee permanently assigned to load and unload children from vehicles. (Ord 38.702, 8-15-95)
- 53.23-9 Parking space as required above shall be on the same lot with the main building or structure or located not more than three hundred (300) feet therefrom. (Renumbered per Ord 38.702, 8-15-95; Ord 38.384, 10/26/76)

NOTE

- 54.13 The provisions amending Section 30, 31, and 35 of this Ordinance, related to development standards, shall not apply to any existing improvements (buildings, landscaping, fencing or **parking**) lawful at the time of installation or improvements which have been approved by the Planning Commission and for which a building permit issued prior to June 17, 1982, and installed in conformance with said approval and permit. (Ord 38.547, 5/19/82)
- 54.13.1 The provisions amending Section 53.14 and 53.22 of this Ordinance, related to parking stall dimensions and compact stall ratios and location, shall not apply to any existing improvements (buildings or parking facilities) lawful at the time of installation or improvements which have been approved by the Planning Commission and for which a building permit issued prior to November 19, 1992 and installed in conformance with said approval and permit. (Ord. 38.675, 10/20/92)

Update log:
Ord 38.708, 8-6-96
Ord. 38.716, 9-15-98 (revised section 53.19)

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Section 54 General Provisions

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- 54.18 Adult Business Location Requirements

54.01 Conformance with All Sections of this Code

No building or structure shall be erected, reconstructed, structurally altered, enlarged, moved or maintained, nor shall any building, structure or land be used or designed to be used for any use other than is permitted in the district in which such building, structure or land is located and then only after applying for and securing all permits and licenses required by all laws and ordinances. (Ord 38, 3/15/55)

54.02 Other Uses Permitted by Commission

Where the term "other uses similar to the above" is mentioned, it shall be deemed to mean other uses which, in the judgment of the Commission as evidenced by a written decision, are similar to the uses listed in the same section and are not objectionable to the general welfare. "Other Uses" so determined by the Commission shall be regarded as listed uses. In no instance, however, shall these regulations be so interpreted to permit a use in a district when such use is specifically listed and permitted in a less restricted district: i.e., a use specifically set forth in the "C2" District shall not be permitted in the "C1" District. (Ord 38, 3/15/55)

54.03 Improvement of: Parking Areas, Auto Sales Areas and Loading Areas

Every parcel of land hereafter used as a private or public parking area, automobile and trailer sales area, or loading area shall be improved in accordance with Chapter 13, Section 18, Title II (Building Regulations) of the Milpitas Municipal Code. (Ord 38.196, 1/20/70)

54.04 Zoning of Annexed Areas

Any area annexed to the City after the effective date of this amendment (10/15/92) shall immediately upon such annexation be automatically classified as an Agricultural District with the "S" Combining District (A-S Zone), unless said area is located east of the alignment of Piedmont Road, Evans Road, North Park Victoria Drive and Interstate I-680 Freeway as shown on the adopted General Plan and more specifically defined as the westerly boundary of the "Hillside Area" as defined in the General Plan, in which case said area shall be classified as Single Family District - Hillside with the "H" Combining District (specifically "R1-H"). (Ord 38.672, 9/15/92)

54.05 Height: Height Conformance

Excepted as hereinafter provided, no building or structure shall hereafter be erected or reconstructed which exceed the height limit established for the district wherein such building or structure is located. (Ord 38, 3/15/55)

54.06 Area: Area Requirements

Except as hereinafter provided, no building or structure shall be hereafter erected or located on a lot unless such building, structure or enlargement conforms with the area regulations of the district in which it is located. (Ord 38, 3/15/55)

54.06-1 No parcel of land held under separate ownership at the time this Ordinance became effective shall be reduced in any manner below the minimum lot width and lot area required by this Chapter. (Ord 38, 3/15/55)

2 No lot area shall be so reduced or diminished that the yards or other open spaces shall be smaller than prescribed by this Chapter, nor shall the occupancy be increased in any manner except in conformity with the regulations herein established. (Ord 38, 3/15/55)

3 No required yard or other open space around an existing building, or which is hereafter provided around any building for the purpose of complying with the provisions of this Chapter, shall be considered as providing a yard or open space for any other building; nor shall any yard or other required open space on an adjoining lot be considered as providing a yard or open space on a lot whereon a building is to be erected. (Ord 38, 3/15/55)

4 Every building hereafter erected shall be located on a lot as herein defined. In no case shall there be more than one (1) main residential building and its accessory buildings on one (1) lot. Group dwellings, court apartments and semi-detached dwellings shall be considered as one (1) main residential building on one (1) lot. (Ord 38, 3/15/55)

5 No parking area, parking space or loading space which existed at the time this Ordinance became effective, or which subsequent thereto is provided for the purpose of complying with the provisions of this Chapter, shall thereafter be relinquished or reduced in any manner below the requirements established in this section, unless equivalent facilities are provided elsewhere. (Ord 38, 3/15/55)

6 No building permit shall be issued for a building or structure on a lot which abuts a street dedicated to a portion of its required width and which lot is located on that side thereof from which no dedication was secured, unless the yards provided on such lot include both that portion of the lot lying within the future street and the required yards. (Ord 38, 3/15/55)

7 No building permit shall be issued for a building or structure on a corner lot when such building or structure is to be oriented in such a manner as to reduce the front yard requirement on the street on which such corner lot had its frontage at the time this Ordinance became effective. (Ord

38, 3/15/55)

8 Every required front, side and rear yard shall be open unobstructed from the ground to the sky. (Ord 38, 3/15/55)

9 At each end of a through lot there shall be a front yard of the depth required by this Chapter for the district in which each street frontage is located; provided, however, that one of such front yards may serve as a required rear yard. (Ord 38, 3/15/55)

10 Any lot of record, whether developed or undeveloped, existing in accordance with law at the time of reclassification by the City of Milpitas, which after said reclassification is less than the minimum lot area required by the zoning district to which it is reclassified shall notwithstanding have all the rights and privileges of said zoning district.

- a. Said rights and privileges shall only remain valid where said lot of record is not modified as to size, shape or area subsequent to said reclassification.
- b. Where the yard regulations, as required by the zoning district to which said lot of record is reclassified, cannot reasonably be complied with because of insufficient minimum lot area by virtue of said reclassification, said regulations may be modified or determined by the Commission as provided for in Section 58. (Ord 38.367, 12/16/75)

54.07 Planned Unit Development Approval

The purpose of planned unit development approval is to allow diversification in the relationships of various buildings, structures, and open spaces in planned building groups and the allowable heights of said buildings and structures, while insuring substantial compliance to the District Regulations and other provisions of this Chapter, in order that the intent of this Chapter, in requiring adequate standards related to the public health, safety and general welfare, shall be observed without unduly inhibiting the advantages of modern site planning for residential, commercial, or industrial purposes. Where use is made of the Planned Unit Development process as provided in this section, a building permit shall not be issued for such development, or part thereof, until the City has approved said development as herein provided. (Ord 38.526, 1/20/81)

54.07-1 Application for Planned Unit Developments shall be made on a form prescribed for this purpose by the City of Milpitas.

No application shall be accepted for a use which will require change of zoning districts, unless said application is accompanied by an application for a zoning amendment, as provided in Section 62. (Ord 38.526, 1/20/81)

2 Application shall be accompanied by a general development plan showing the use or uses, dimensions and locations of proposed structures and of acres to be reserved for vehicular and pedestrian circulation, parking, public uses such as schools and playgrounds, landscaping, and other open spaces, and architectural drawings and sketches demonstrating the design and character of the proposed uses and the physical relationship of the uses. Such other pertinent information shall be included as may be required by the Commission. (Ord 38. 89, 7/7/66)

3 Application shall be accompanied by a fee which shall be established by City Council Resolution. (Ord 38.377, 9/7/76)

4 The Planning Commission shall hold at least one (1) public hearing, prior to making its recommendations to the City Council. Upon receipt of the recommendation of the Planning Commission, the City Council shall hold at least one (1) public hearing, prior to any final action on an application. (Ord 38.89, 7/7/66)

5 Notice of hearing shall be given in accordance with the provisions of Subsection 64 of this Chapter. (Ord 38.92, 12/6/66)

6 In order to grant a Planned Unit Development permit the Planning Commission and City Council shall determine that the following standard requirements have been met:

a) The proposed development will result in an intensity of land utilization no higher than and standards of open spaces at least as high as permitted or specified otherwise for such development in the General Plan, Zoning Ordinance and Subdivision Ordinance.

b) The development will not create traffic congestion pursuant to the California Environment Quality Act (CEQA). However, if

traffic congestion is created by the proposed development, the traffic impacts will be mitigated by traffic improvements proposed by the developer or by funding capital projects and by on-site provisions for traffic circulation and parking or, if it cannot be mitigated, the Planning Commission and City Council shall issue any necessary findings pursuant to CEQA.

c) For residential development in the Valley Floor Planning Area, as defined in the Milpitas General Plan Land Use Element, the maximum dwelling unit density per gross acre shall be the upper limit of the corresponding General Plan density range within each zoning designation. In the case of the Valley Floor Planning Area residential developments proposed on land zoned "R-3" (Multiple Family Residential) an overall density of up to forty (40) units per gross acre can be approved if the following criteria are found by the City Council to be met.

- 1) Sewer capacity and water availability will be sufficient to accommodate the proposed project density as well as other future planned unit development downstream from the project site. Any improvements to the sewer or water system that would be required to accommodate any higher density proposals may be made conditions of project approval;

- 2) Traffic from increased "R-3" density must not cause any local street intersection to decrease its Level of Service (LOS) below "E" Volume/Capacity greater than 0.99 as determined by the City of Milpitas Transportation Division when added to existing traffic. A traffic report or analysis may be required to address the traffic impacts from the proposed project. Traffic impacts from approved, underdeveloped projects and future planned or proposed

roadway improvements may be factored into the traffic report or analysis. If the traffic impacts cannot be mitigated, the Planning Commission and City Council shall issue any necessary findings pursuant to CEQA.

In addition to the finding that standard requirements above have been met, the Planning Commission and City Council must also make the following findings based on evidence in the record in order to approve the Planned Unit Development application:

- a) Development of the site under the provisions of the Planned Unit Development will result in public benefit not otherwise attainable by application of the regulations of general zoning districts.
- b) The proposed Planned Unit Development is consistent with the Milpitas General Plan; and
- c) The proposed development will be in harmony with the character of the surrounding neighborhood and will have no adverse effects upon the adjacent or surrounding development, such as shadows, view obstruction, or loss of

privacy that are not mitigated to acceptable levels.
(Ord 38.706, 7/16/96)

7 Deleted (Ord 38.706, 7/16/96)

8 The Planning Commission shall make its recommendation to the City Council within forty-five (45) days of the date of the filing of application (pending any necessary zoning amendment). The Commission may recommend to the City Council that the permit be denied, that permit be approved as submitted, or that the permit be approved, subject to various conditions. Within thirty (30) days of the receipt of the recommendation from the Planning Commission, the City Council shall hold a hearing, as required by paragraphs 54.07-3 and 54.07-4 of this subsection. The City Council shall consider the report of the Planning Commission but shall not be bound thereby. Upon the close of the hearing, the City Council may deny the permit, approve the permit as submitted, or approve the permit subject to such conditions as it deems necessary (in addition to or other than those recommended by the Planning Commission).

Any Planned Unit Development, as authorized, shall be subject to all conditions imposed by the City and shall be excepted from other provisions of this Chapter, only to the extent specified in said permit. (Ord 38.89, 7/7/66)

9 Following the issuance of a Planned Unit Development by the City Council, the Building Inspector shall issue a building permit and shall insure the development is undertaken and completed in conformance with the approved plans. (Ord 38.89, 7/7/66)

10 A Planned Unit Development permit may be revoked after notice to the permittee and hearing in any case where the conditions of such permit have not been complied with. The revocation of the permit shall only be made after written notice of violation is given to the holder of the permit. The permit holder shall be given the opportunity to explain why the permit should not be revoked. The Planning Commission and City Council shall hold a public hearing regarding the permit. After receiving the Planning Commission's recommendations on permit, the City Council at its discretion may revoke the permit issued if they determine that the previous conditions of approval have not been complied with. The public hearing shall be held in accordance with Title XI,

If a Planned Unit Development is submitted in conjunction with the Tentative Map application, then the approval of the Planned Unit Development shall run concurrent with and expire with the approved Tentative Map.

Where no Tentative Map is submitted in conjunction with the Planned Unit Development application, and the Planned Unit Development permit has not been used within one (1) year after the date of granting thereof, then, without action, the permit granted shall be null and void. (Ord 38.89, 7/7/66; Ord 38.706, 7/16/96)

11 No area designated for use as a "Common Green" or "Park" upon any map or plat or plan which has been approved as part of a Planned Unit Development may be used for any purpose other than a Common Green or Park or Playground, including but not limited to a School Playground as approved by the City Planning Commission. (Ord 38.68, 4/15/65)

(Ord 38.706 7/16/96, Sec 54.07.6 amended, Sec 54.07.7 deleted, Sec 54.07.10 amended)

54.08 Home Occupation

A home occupation is a business enterprise conducted within a dwelling by the residents of the dwelling and which is incidental and secondary to the use the dwelling for residential purposes.

54-08-1 The purpose of this Section is to provide residents with the ability to work at home yet ensure that the business does not interfere with, detract from, or otherwise adversely affect the character of the neighborhood.

54.08-2 Regulations

a) All persons operating a home occupation must obtain a home occupation permit from the City prior to commencing any business. It shall be unlawful to operate a home occupation without a permit.

b) Only the residents of the dwelling may operate the home occupation. No employees associated with the home occupation shall report to work on the premises.

c) The home occupation shall not involve more than one client visitation on the premises at any time.

- d) The home occupation shall not be operated in a manner which creates noise, vibrations, dust, odor, smoke or television and radio interference affecting adjoining properties.
- e) No signs are permitted either on or off the premises in connection with the home occupation. Products or equipment produced or used by home occupation shall not be displayed in a manner which is visible from the exterior of the dwelling.
- f) There shall be no storage of materials or supplies outdoors in a manner which is visible from adjacent properties or public ways.
- g) The home occupation shall not require modification or exterior alterations of the dwelling in which a home occupation is conducted.
- h) The home occupation shall be conducted entirely within the dwelling except for those types of occupations which are conducted entirely off-site and away from the dwelling.
- i) The occupations listed below shall not be considered incidental and secondary to the residence because they will change the residential character of the dwelling and because they change the character of the neighborhood;

- 1) Barber and beauty shops or similar cosmetology establishments
- 2) Kennels and other boarding for pets
- 3) Mechanical and auto repairs
- 4) Medical and dental offices
- 5) Retail sales

54.08-3 Violation of regulations. Violation of any provision of this chapter may result in the revocation of the home occupation permit after notice and a opportunity for a hearing has been given to the permittee.

(Ord. 38.39, 7/16/63)

(Ord. 38.164, 6/4/68)

(Ord. 38.175, 1/7/69)

(Ord. 38.703, 7/18/95 Old Sec. 54.08-1&2 deleted; New Sec. 54.08-1, 2, 3 Added)

54.09 Accessory Buildings and Patio Covers

54.09-1 An accessory building may be erected detached from the principal building, or erected as an integral part of the principal building, or it may be connected therewith by a breezeway or similar structure.

2 An accessory building attached to the main building shall be made structurally a part and have a common wall with the main building and shall comply in all respects with the requirements of this Chapter applicable to the main building.

Unless so attached, an accessory building in an "R" District shall be located on the rear one-half (1/2) of the lot and at least ten (10) feet from any dwelling building existing or under construction on the same lot and at least fourteen (14) feet from a residential structure existing or under construction on any adjacent lot. Any accessory building shall not be located within three (3) feet of any rear lot line or side line of the rear half of an adjacent lot or within seven (7) feet of the side line of the front half (1/2) of any adjacent lot; and, in the case of a corner lot, shall not project beyond the front line required or existing on the adjacent lot. (Ord 38.667, 1/21/92)

3 Accessory buildings shall not exceed thirty (30%) percent of the area of the required rear yard. Recreation shelters and storage shelters shall be permitted as accessory buildings provided that these uses are not equipped for use as living quarters. (Ord 38.342, 7/2/74)

4 Guest house accessory buildings shall be located on the rear half of the building site and shall not be closer than ten (10) feet from the nearest point of the main building. There shall be not more than one (1) guest house on any one (1) building site which together with other accessory building shall not exceed thirty (30%) of the area on the rear yard on which it is built. (Ord 38.19, 1/17/61)

5 Patio covers (as defined by this Chapter) shall not be considered an accessory building. (Ord 38.342, 7/2/74) *(Also see Section 55.04-5)*

54.10 Geologic Hazard Zones

- 54.10-1 Any zoning application proposed for new real estate development or structure for human occupancy shall be subject to approval in accordance with the policies and criteria established by the State Mining and Geology Board and findings of the State Geologist in conformance with the requirements of the Public Resources Code, Section 2621, et. seq. (Ord 38.347, 10/15/74)

54.11 Fences

54.11-1 Measurement of Fence Height

The height of a fence shall be measured from the finished grade to the top of fence at any point (including barbed wire tops). Where the finished grade is a different elevation on either side of the fence, the height may be measured from the side having the highest elevation.

54.11-2 Regulations for the Valley Floor

3 Height Limitations

Fences shall not exceed six (6) feet in height at the rear and side yards, and forty-two (42) inches in height at the front yard.

4 Exceptions

a) In any zoning district combined with the "S" Combining District, fences at the rear and side yards may be eight (8) feet maximum height when approved by the Planning Commission.

b) In all zoning districts fences at the rear and side yard adjacent to recreational areas, athletic fields or courts may be twelve (12) feet maximum height provided that the portion of the fence higher than six (6) feet is of approved openwork.

c) In all zoning districts, fences at the front yard and within thirty-five (35) feet of a street corner shall be of an approved openwork.

d) In residential zoning districts fences at the rear and side yards may exceed six (6) feet but not exceed eight (8) feet in height provided written consent of adjoining residential property owner(s) is received. See Building Code for permit requirements for fences exceeding six

(6) feet in height.

e) In any Commercial or Industrial zoning district, fences or walls used for the purpose of screening or providing security to mechanical equipment such as but not limited to air conditioning units, chemical tanks or tank farms or the like, may exceed six (6) feet in height subject to the provisions of Section 42.10 of this Chapter. (Ord. 38.716, 9/15/98)

5 Regulations for the Hillside

6 Construction Materials

All fence post and supporting framework material shall be wood in order to maintain the rural character of the hills. The Planning Commission, under the "H" Combining District review process, may approve any other type material for the posts.

7 Openwork Design

Openwork type fences shall be composed of materials which results in a minimum of seventy-five (75%) visual transparency within every square foot area, post excluded. Chain link fences and cyclone type fences are not considered an approved material in the area.

8 Height Limitations

Fences shall not exceed fifty-four (54) inches in height, and be an openwork design, and may be located anywhere on the parcel. No city review of this type fence is required.

9 Exceptions

a) In any zoning district combined with the "H" Combining District fences at the rear and side yards which exceed fifty-four (54) inches in height and those fences other than an openwork design may be constructed on a parcel or lot, if and when their location and design have first been approved by the Planning Commission.

b) In any zoning district combined with the "H" Combining District fences around tennis courts, and the like as determined by the Planning Commission, may be eight (8) feet maximum height provided that the portion of the fence higher than six (6) feet is an approved openwork design. The Planning Commission, under the "H" Combining district review process, may approve fences over eight (8) feet in height.

All tennis courts and the like shall be screened from view from the Valley Floor with landscape materials, as outlined in the City Councils Hillside Landscape Policy, with said landscaping to the approval of the Planning Commission.

c) Barbed wire fences, using a post material other than wood, may be erected on any parcel two (2) acres or more without Planning Commission review or approval.

10 Prohibited Fences

Barbed wire fences within four (4) feet of a public sidewalk, electrically charged fences and fences which interfere with public utilities or public easements are not permitted.

(Ord. 38.652 adopted 7-17-90 Fences)

54.12 Home Buyers Awareness of General Plan

At the time of initial sale of a newly constructed "R1" home, the residential builder's sales staff shall be required to obtain the signatures of the buyers that they have been made aware of the adopted General Plan proposed land uses for the area within the general neighborhood or the proposed purchase site, and receive a copy of said General Plan map.

If the buyer needs further detail of types of specific uses possible within a given General Plan designation, they shall be directed to make inquiry at the Milpitas Planning Division. (Ord 38.505, 5/6/80)

54.13 The provisions amending Sections 30, 31, and 35 of this Ordinance, related to development standards, shall not apply to any existing improvements (buildings, landscaping, fencing or parking) lawful at the time of installation or improvements which have been approved by the Planning Commission and for which a building permit issued prior to June 17, 1982, and installed in conformance with said approval and permit. (Ord 38.547, 5/19/82)

54.13.1 The provisions amending Section 53.14 and 53.22 of this Ordinance, related to parking stall dimensions and compact stall ratios and location, shall not apply to any existing improvements (buildings or parking facilities) lawful at the time of installation or improvements which have been approved by the Planning Commission and for which a building permit issued prior to November 19, 1992 and installed in conformance with said approval and permit. (Ord. 38.675, 10/20/92)

54.14 Mobile Home Development Standards

54.14-1 A single mobile home may be permitted on lots zoned for single-family dwellings where it has been determined the lot and structure are compatible:

- a. In districts where site plan and architectural review is not generally required for single-family dwellings, the site plan and architectural review process shall be utilized to initially determine if a lot and structure is compatible for a mobile home. Compatibility of a lot and structure shall be determined by such factors as height, bulk and character of other structures in the neighborhood. If a lot and structure is determined to be compatible, site plan and architectural review is limited only to specifying roof overhang, roofing material and siding material based on the following standards:

2 The following development standards shall be applicable to the establishment of mobile homes as single-family dwellings in the "R1" and "AR" Districts:

.1 Mobile homes and any garages, carports, and other structures attached thereto, must conform to all regulations for single-family dwellings applicable to the zone.

.2 Mobile homes must be certified under the National Manufactured Housing Construction and Safety Standards Act of 1974.

.3 Mobile homes must be attached to a permanent engineered perimeter foundation system approved by the Chief Building Official and pursuant to Section 18551 of the State Health and Safety Code.

.4 Mobile homes must be covered with stucco and/or wood siding or an exterior or an exterior material commonly found on new conventionally erected single-family dwellings in the surrounding area.

.5 The roofing material must be wood or composition shingles or other materials commonly found on conventionally erected single-family dwellings in the surrounding area. The roof must have a minimum pitch with respect to roofing material in accordance with the City of Milpitas Building Code.

.6 The roof must have eaves and gable overhangs of not less than eighteen (18) inches measured horizontally from the vertical side of the mobile home. The overhang must be constructed with materials commonly found on conventionally erected single-family dwellings in the surrounding area and must be at the same slope and be covered with the same roofing material as the roof itself.

.7 The exterior covering and roofing materials of the garage, carport, or any other structure attached to the mobile home must be the same as for the mobile home.

3 As used in this section, "commonly found" means an architectural feature or construction material that occurs or appears frequently on conventionally erected single-family dwellings with five hundred (500) feet from the boundaries of the lot or parcel on which a mobile home is proposed as determined by the Planning Commission. (Ord 38.541, 4/20/82)

54.15 Areas for Collecting and Loading Recyclable Materials
(Ord 38.687, 5/19/94)

54.15-1 Recycling Areas At New Developments

Areas for Collecting and Loading Recyclable Materials are required for: (Ord 38.687, 5/19/94)

a) Any project for which a building permit will be required for a commercial, industrial, or institutional building, or residential building having five (5) or more living units, where solid waste is collected and loaded; and any residential project where solid waste is collected and loaded in a location serving five (5) or more units using containers of one (1) cubic yard or larger. (Ord 38.687, 5/19/94)

b) Any new public facility where solid waste is collected and loaded and any improvements for areas of a public facility used for collecting and loading solid waste in containers of one (1) cubic yard or larger (Ord 38.687, 5/19/91)

54.15-2 Recycling Areas At Existing Developments

Recycling areas are required to be added to existing development projects if one or more of the following conditions occurs: (Ord 38.687, 5/19/94)

a) The area subject to modifications or amendment is that part of a development which is used for collecting and loading solid waste. This condition applies regardless of the size of the modification, or (Ord 38.687, 5/19/94)

b) A single modification, or multiple modifications which are constructed within a twelve (12) month period, which collectively adds thirty (30%) percent or more to the existing gross floor area of the development project. (Ord 38.687, 5/19/94)

54.15-3 Waiver of parking spaces, encroachment into landscaping or open space areas for voluntary participation: (Ord 38.687, 5/19/94)

a) When the property owner or tenant, with the property owner's approval, voluntarily participates in the recycling program in an existing development, the recyclable area may utilize up to two (2) parking spaces or encroach into any side or rear yard landscape setback or open space area for the location of the recycling container if no other area is available. The Community Development Manager may approve of the plan and shall provide a written decision supporting the decision. (Ord 38.687, 5/19/94)

b) Provided further, if the Community Development Manager does not approve the property owner's or tenant's request, they have the right to appeal by filing an "S" Zone Amendment application to the Planning Commission. There shall be no filing fee associated with this review. (Ord 38.687, 5/19/94)

c) The loss of the two (2) parking spaces shall not be deducted from the total count of parking for the purpose of meeting the on-site parking criteria, from calculating the gross floor area of the building or seating requirement, or for any other use that is determined by the amount of parking space. (Ord 38.687, 5/19/94)

54.15-4 Design Guidelines

The design and construction of recycling areas shall be reviewed in accordance with the guidelines adopted by Council Resolution for recycling areas. (Ord 38.687, 5/19/94)

54.16 Large Family Day Care Home and Day Care Center Development Standards

(Ord. 38.701, 8-15-95 - Adopted Sec. 54.16 in its entirety)

Purpose: The purposed of provisions dealing with day care facilities is to allow regulation of such facilities to the extent provided herein. However, nothing is intended to allow regulation to a greater extent than allowed by State law.

1. Off-Street Parking Requirements:
There shall be provided off-street parking spaces for automobiles in accordance with the requirements of Section 53. All such parking spaces shall be improved as provided for in Subsection 54.03.
2. Hours of operation:
Hours of operation shall be determined through the Use Permit process and shall be based on compatibility with neighboring properties and other planning principles as set forth in Section XI-10-57.
3. Fence Height:
Outdoor play areas shall be enclosed with a six-foot high fence. The fence type shall be determined through the Use Permit process based on compatibility with neighboring properties and other planning principles as set forth in Section XI-10-57.
4. Code Enforcement Procedures:
If any Large Family Day Care Home and Day Care Center is operating in a manner which constitutes a nuisance, the Use Permit shall be reviewed by the City Planning Commission with a recommendation to the City Council pursuant to Section 63.06 (Revocation, Suspension and Modification)

54.17 School Mitigation Impact Fees/School Availability for Residential General Plan Amendments and Rezoning of New Residential Development Projects
(Ord. 38.704, 7/18/95)

54.17-1 School Availability:
This Chapter provides a mechanism by which the City Council can assess whether any potential burden on school availability created by proposed residential project has been appropriately addressed, prior to approval of a General Plan Amendment and rezoning of new residential development projects.

54.17-2 Applicability:

- A. The provisions of this Chapter are applicable only to school availability for the Milpitas Unified School District.
- B. This Chapter shall apply to all residential General Plan Amendments and rezoning of new residential development projects, except Council initiated General Plan Amendments, rezonings and Senior Citizen Housing projects.
- C. For the purpose of this Chapter "Senior Citizen Housing" shall mean dwelling units limited to residents of 55 years and older through enforceable restrictions in accordance with Civil Code Section 51.3.

54.17-3 Participating School District:
"Participating School District" shall mean the Milpitas Unified School District entitled to the maximum fee permitted pursuant to Government Code 65995 upon having filed a timely School Availability Statement in accordance with Section 54.16-4.

54.17-4 School Facility Availability Statement:

- A. The School Availability Statement shall be filed with the City Clerk by September 15 of each year.
- B. The School Availability Statement shall include all the following information:
 - 1. the capacity of the District's school facilities to accommodate the projected district-wide student enrollment.
 - 2. The District's current Capital Improvement Program (CIP), if available.
 - 3. The District's current Fee Justification Study and schedule of any development fees adopted by the District.
 - 4. A description of the measures that the District has taken, studied and rejected or is currently studying to increase student capacity as found in the Long Range Facility Master Plan.

5. A description of closed or undeveloped school sites owned by the District, including the location and size of each site.
6. A copy of an annual audit of the use of any and all funds collected, expended and retained from developers for the purpose of capital facilities (e.g. Fund 54), and a description of the use or planned use of these resources to provide facility capacity.
7. A copy of the Resolution passed by the School Board attesting that the School District is entitled to the maximum fee permitted pursuant to Government Code 65995 and that the information provided in the School Availability Statement demonstrates that, based on a ten-year horizon, there is inadequate school capacity available in the district to accommodate future development.
8. A District contact person to coordinate inquiries from the City and development community.

54.17- Procedure:

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- A. Within five (5) days of the filing of the residential General Plan Amendment and rezoning of new residential development projects subject to this Chapter, the applicant shall deliver a summary of the residential General Plan Amendment and rezoning of new residential development project and site location map on a form approved by the Community Development Director, to the Milpitas Unified School District. In addition, the applicant shall make an offer to meet with the school district superintendent or the superintendent's designee's within twenty (20) days after delivering the GPA and rezoning of new residential development project summary.
- B. The applicant shall file proof with the Director that the GPA and rezoning of new residential development project summary and offer to meet has been delivered to the Milpitas Unified School District.
- C. If the applicant has made the offer to meet and attended a meeting scheduled within the required period, the requirement that the applicant meet with the MUSD shall be deemed satisfied. The MUSD failure to schedule and or attend a meeting with the required period shall be deemed a waiver of the requirement for the applicant to meet with the school district.
- D. Within thirty (30) days after the delivery of the GPA and rezoning of new residential development project summary, the applicant shall notify the Director, with a copy to the MUSD whether the applicant has met, reached an agreement regarding the provision of school facilities, or made an irrevocable offer.

54.17- Findings:

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- A. The City Council may approve a residential GPA and rezoning of new residential development projects other than a Council initiated General Plan Amendments, rezoning or Senior Citizen Housing, served by the MUSD, only after finding that school availability is not unreasonably burdened by the project because:
 - 1. There is no substantial lack of school availability to serve this project; or
 - 2. The applicant has entered into an agreement with the MUSD or has made an irrevocable offer to reasonably address any burden on school availability created by the project; whether the offer was accepted or not. For purposes of this finding an irrevocable offer consistent with the adopted City Policy shall be deemed to reasonably address any burden on school availability created by the project.
- B. If no finding is made pursuant to subsection A, the residential GPA and rezoning of new residential development project shall be phased or denied, unless the City Council determines that the benefits of the project outweigh the burden on school availability which will be created by approving the application.
- C. If applicant has not entered into an agreement with the MUSD and has not made an irrevocable offer consistent with the City Policy, the applicant shall have the burden of proof of establishing that a finding required by this Section can be made. Nothing herein shall limit the discretion of the City Council to make any finding that it deems appropriate.

MILPITAS CITY COUNCIL SCHOOL FACILITY AVAILABILITY POLICY

BACKGROUND

The Milpitas Unified School District (MUSD) has experienced growth in student enrollment due to new residential development. The State of California has primary responsibility for funding schools, but the State funding for school facilities has been unavailable or insufficient to meet the needs of the MUSD. The State Impact Fee established by the State Legislature for residential development to provide school facilities to serve new development has provided only a portion of the funding necessary for the needed facilities.

The Milpitas City Council recognizes the importance of quality public schools to the citizens of Milpitas and to the economic health of the community. Residential development is also vital to the economic well-being of Milpitas and cannot be expected to fully finance all necessary school facilities. Recognizing the dual importance to the community, the City has considered the views of the MUSD and

the representatives from the development community to develop a policy and ordinance for addressing the availability of school facilities within the General Plan Amendment and rezoning of new residential development projects.

PURPOSE AND SCOPE

The purpose and scope of this policy is:

1. To recognize that the State School Impact Fee falls short of providing the facilities needed to serve new residential development. This policy establishes the City Council's intent to consider whether the availability of school facilities has been reasonably addressed by the developer in making its decision to approve, deny or reduce the density of any proposed residential General Plan Amendments and rezoning of new residential development projects other than Council initiated General Plan Amendments, rezonings and Senior Citizen Housing which would impact the MUSD facilities needs.
2. To define a process that facilitates communication between the school district and the developer regarding the school facility needs generated by new residential development.
3. To address the need for joint action by the City, MUSD, and the development community in lobbying the State Legislature for comprehensive and long-term solutions to the problem of adequately funding public schools.

POLICY

I. Policy Overview:

It is the policy of the City of Milpitas to support the provision of quality public schools to serve the citizens of Milpitas by:

1. Fostering communication among the City, the school district and residential developers regarding the school facilities needed to serve new residential development;
2. Expecting school district and developers to communicate regarding the provision of school facilities to serve new housing;
3. Denying or phasing residential General Plan Amendments and rezoning of new residential development projects, other than Council initiated General Plan Amendments, rezonings and Senior Citizen Housing, where the burden on school availability for MUSD which will be created by the proposed residential development has not been reasonably addressed to the satisfaction of the City Council; and
4. Supporting long-term funding solutions for public school facilities.

II. Guidelines for Addressing School Availability

A. Participating School District - MUSD

The ability of the City to assess school availability is dependent on the willingness of the school district to provide reliable detailed information in a timely manner. Therefore, in order to participate in this program, the school district must file a timely School Availability Statement in accordance with City Council Ordinance No. 38.704. If

such a statement is not timely filed, Ordinance No. 38.704 and this policy shall not be applicable.

B. Residential General Plan Amendments and Rezoning of New Residential Development Projects

In considering whether to approve, phase or deny any residential General Plan Amendment and rezoning of new residential development projects, other than Council initiated General Plan Amendments, rezonings and Senior Citizen Housing, the City Council shall consider school availability of MUSD in accordance with Ordinance No. 38.704.

A developer will be determined to have reasonably addressed any burden of school availability created by the project if the developer has entered into an agreement with the MUSD or has made an irrevocable offer to pay the MUSD the presumptive payment as set forth in this Policy, whether the offer was accepted or not. The presumptive payment shall be due and payable prior to issuance of building permits for each residential unit.

The Presumptive Payment:

HOUSING TYPE

Amount per square foot in addition to the Government Code 65995 fee in effect at the time that the residential General Plan Amendment and/or rezoning of new residential development application is filed.

ALL RESIDENTIAL GENERAL PLAN AMENDMENTS AND REZONING OF NEW RESIDENTIAL DEVELOPMENT PROJECTS

60% of the maximum fee permitted pursuant to Government Code 65995.

III. COMMUNICATIONS:

A. The Department of Community Development shall implement improved communication with the school district by:

1. Instituting an expanded referral process whereby all residential general plan amendments, rezonings, development permit applications, and tentative maps, other than Council initiated General Plan Amendments, rezonings and Senior Citizen Housing, are referred to the MUSD within which they are located.
2. Developing information packets for the school district that explain the City's development review process.
3. Preparing a quarterly report listing all new development applications filed during each quarter.
4. Hosting an annual meeting with the school district after

completion of the comprehensive update of the General Plan Land Use Element to provide an update on land use changes and any major planning studies, to present an overview of the City's development review process and to highlight current trends in development.

B. In order to facilitate communication regarding school facility availability, MUSD shall:

1. File a School Availability Statement in accordance with Ordinance No. 38.704.
2. Hold an annual briefing for City and interested developers on the district current and planned facilities, on any transportation/desegregation issues unique to their district that are affected by development and on the district's status in the state process for facility financing.

C. As part of the development process, the developers shall:

1. Engage in early discussions with the MUSD regarding proposed residential development. Ideally, preliminary discussions should precede or immediately follow land acquisition.
2. Consult with the MUSD during the planned project to ensure that school facility availability is reasonably addressed.

IV. Comprehensive and Long Term School Funding Solutions

It is the policy of the City that there must be long-term funding solutions for schools.

- A. The City supports a joint state lobbying effort to address key school funding issues that are outside the control of the City, school district and the development community.
- B. The City will participate in a committee of school district and development community representatives to develop a joint lobbying strategy to address issues of mutual concern.
- C. The City supports local bond measures to raise funds for school facilities.

School Facility Availability Policy adopted by City Council on July 18, 1995

54.18 Adult Business Location Requirements

54.18.1 Purpose and Intent

The purpose of this Subsection is to establish reasonable and uniform regulations regarding the location of Adult Businesses, which will permit the location of Adult Businesses in certain areas but which will also reduce or prevent neighborhood blight, maintain property values; and reduce the incidence of unlawful activity by preventing the concentration of Adult Businesses or their close proximity to incompatible uses.

54.18.2 Definitions

(a) Adult Business means any of the following:

(1) Adult Arcade. The term "adult arcade" as used in this Subsection, means any place to which the public is permitted or invited, wherein coin-operated, currency operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, television sets, monitors, receivers, transmitters, video cassette players or other image producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting, describing or relating to "specific sexual activities" or "specified anatomical areas".

(2) Adult Bookstore. The term "adult bookstore" as used in this Subsection means an establishment that has thirty (30) percent or more of its stock in books, visual or audio representations which are distinguished or characterized by an emphasis upon the depiction or description of "specified sexual activities" and/or "specified anatomical areas".

(3) Adult Cabaret. The term "adult cabaret" as use in the Subsection, means a nightclub, restaurant, or similar business establishment which: (1) regularly features live performances which are distinguished or characterized by an emphasis upon the display of "specified sexual activities"; and/or (2) which regularly features persons who appear semi-nude; and/or (3) shows films, computer generated images, motion pictures, video cassettes, slides, or other photographic reproductions thirty (30) percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or description of "specified sexual activities" and/or "specified anatomical areas".

(4) Adult Hotel/Motel. The term "adult hotel/motel" as

used in this Subsection means a hotel or motel or similar commercial establishment which:

1. Offers public accommodations, for any form of consideration, which provide patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" and/or "specified anatomical areas" and which advertises the availability of this sexually oriented type of material by means of any off-premises advertising including but not limited to newspapers, magazines, pamphlets or leaflets, radio or television; and
2. Offers a sleeping room for rent for a period of time that is less than ten (10) hours or allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours, or rents any single room more than twice in a 24-hour period.

(5) Adult Motion Picture Theater. The term "adult motion picture theater" as used in this Subsection, means a business establishment in which for any form of consideration, films, motion pictures, video cassettes, video tapes, laser discs, slides or similar photographic or electronic reproductions are regularly shown and thirty (30) percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or description of "specified sexual activities" and/or "specified anatomical areas".

(6) Adult Theater. The term "adult theater" as used in this Subsection, means a theater, concert hall, auditorium or similar establishment which, for any form of consideration regularly features live performances which are distinguished or characterized by an emphasis on the display of "specified sexual activities" and/or "specified anatomical areas".

(7) Escort. The term "escort" as used in this Subsection, means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(8) Escort Agency. The term "escort agency" as used in

this Subsection, means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

(9) Modeling Studio. The term "modeling studio" as used in this Subsection, means a business which provides, for pecuniary compensation, monetary or other consideration, hire or reward, figure models who, for the purposes of sexual stimulation of patrons, display "specified anatomical areas" to be observed, sketched, photographed, painted, sculpted or otherwise depicted by persons paying such consideration. "Modeling studio" does not include schools maintained pursuant to standards set by the State Board of Equalization. "Modeling studio" further does not include a studio or similar facility owned, operated, or maintained by an individual artist or group of artists, and which does not provide, permit, or make available "specified sexual activities".

(b) Distinguished or characterized by an emphasis upon. As used in this Subsection, the term "distinguished or characterized by an emphasis upon" shall mean and refer to dominant or essential theme of the object described by such phrase. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon" the depiction or description of specified sexual activities or specified anatomical areas, the films so described are those whose dominant or predominant character and theme are the depiction of the enumerated sexual activities or anatomical areas.

(c) Nudity or a state of nudity. The term "nudity or a state of nudity" as used in this Subsection, means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the areola or nipple, or the showing of the covered male genitals in a discernible turgid state.

(d) Regularly Features. The term "regularly features" with respect to an adult motion picture theater, theater or adult cabaret means a regular and substantial course of conduct. The fact that live performances which are distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities occurs on two (2) or more occasions within a thirty (30) day period; three (3) or more occasions within a sixty (60) day period, or four (4) or more occasions within a one hundred and eighty (180) day period, shall to the extent permitted by law be deemed to be a regular and substantial course of conduct.

(e) School. The term "school" as used in this Subsection is an institution of learning for minors, whether public or private, offering instruction in those courses of study required by the California Education Code and maintained pursuant to standards set by the State Board of Education. This definition includes kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college, or university. The term "school" as used in this ordinance also means day care center or facilities.

(f) Semi-nude. The term "semi-nude" as used in this Subsection means a state of dress in which clothing covers no more than the genitals, pubic region, and areolas of the female breast, as well as portions of the body covered by supporting straps or devices.

(g) Specified Anatomical Areas. The term "specified anatomical areas" as used in this Subsection means and includes any of the following:

1. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breast below a point immediately above the top of the areola; or
2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
3. Any device, costume or covering that simulates any of the body parts included in subdivisions (1) or (2) above.

(h) Specified Sexual Activities means and includes any of the following:

1. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts;
2. Sex acts, actual or simulated, including intercourse, oral copulation, or sodomy;
3. Masturbation, actual or simulated;
4. Human genitals in a state of sexual stimulation, arousal or tumescence; or
5. Excretory functions as part of or in connection with any of the activities set forth in (1) through (4) of this Subsection.

(i) Establishment of an Adult Business. As used in this Subsection, to "establish" an Adult Business shall mean and include any of the following:

1. The opening or commencement of any Adult Business as a new business;
2. The conversion of an existing business, whether or not an Adult

- Business, to any Adult Business defined herein;
3. The addition of any of the Adult Businesses defined herein to any other existing Adult Business; or
 4. The relocation of any such Adult Business.

54.18.3 Location and Distance Regulations

(a) Adult Businesses shall only be allowed in H-S (Highway Services), M-1 (Light Industrial) and M-2 (Heavy Industrial) districts.

(b) No Adult Business shall be allowed:

1. Within 1000 feet of any school, public park or recreation area, residential district, mobile home park or MHP District, church, or religious institution;
2. Within 500 feet of any other Adult Business premises.

(c) Any Adult Business lawfully established and lawfully operating under the Milpitas Municipal Code is not in violation of these regulations by the subsequent establishment of a school, public park or recreation area, residential district, church or religious institution within the respective distances specified above for each type of use. This provision applies only to the renewal of an Adult Business permit and does not apply when an application for an Adult Business permit is submitted after such permit has been revoked.

(d) Distance between any two (2) Adult Businesses premises shall be measured in a straight line, without regard to intervening structures or objects, from the nearest entrance of an adult business premises to the nearest entrance of the second adult business premises. The distance between any Adult Business premises and any school, public park, or recreation area, residential district, church or religious institution shall also be measured in a straight line, without regard to intervening structures or objects, from the nearest entrance of an Adult Business premises to the nearest property line of a school, public park or recreation area, residential zone, or church or religious institution.

(Ord. 38.652, 7/1790 - Sec 54.11 Fences)

(Ord 38.687, 5/19/94 - Sec 54.15 in its entirety)

(Ord. 38.704, 7/18/95 - Sec. 54.17 in its entirety)

(Ord. 38.702, 8-15-95 - Sec. 54.16 in its entirety)

(Ord 38.711, 8/20/96 - Sec. 54.18 in its entirety)

(Ord. 38.716, 9/15/98 - Sec. 54.11-4 amended)

Section 55 Exceptions

Section 55 Contents

- 55.01 Use
 - 55.02 Height
 - 55.03 Area
 - 55.04 Projections Allowed Into Yards
- 7-10-95

55.01 Use

See non-conforming uses (Section 56). (Ord 38, 3/15/55)

55.02 Height

- 55.02-1 Through Lot 150 Feet or Less in Depth
On a through lot one hundred fifty (150) feet or less in depth, the height of a building may be measured from the adjoining curb level on either side. (Ord 38, 3/15/55)
- 55.02-2 Through Lot More than 150 Feet in Depth
On a through more than one hundred fifty (150) feet in depth, the height regulation and basis of height measurement for the street permitting the greater height shall apply to a depth of not more than one hundred fifty (150) feet from that street. (Ord 38, 3/15/55)
- 55.02-3 Structures Permitted Above Height Limit
Penthouses or roof structures for the housing of elevators, stairways, tanks, ventilating fans or similar equipment required to operate and maintain the building. Parapet walls, skylights, towers, process towers and columns, including appurtenant working structures, steeples, flagpoles, chimneys, smokestacks, wireless masts, water tanks, gas tanks, silos, or similar structures may be erected above the height limits herein prescribed, but no penthouse or roof structure, or any space above the height limit shall be allowed for the purpose of providing additional floor space. (Ord 38, 3/15/55)

55.03 Area

55.03-1 Yard Regulations Modified

Where the yard regulations cannot reasonably be complied with, or their application determined on lots of peculiar shape or location or on hillside lots, such regulations may be modified or determined by the Commission as provided for in Section 58 (Variances). (Ord 38, 3/15/55)

55.03-2 Front Yard - Between Projecting Buildings

Where a lot is situated between two (2) lots, each of which has a main building (within twenty-five (25) feet of its side lot lines), which projects beyond the established front yard line and has been so maintained since this Ordinance became effective, the front yard requirement on such lot may be the average of the front yards of said existing buildings. (Ord 38, 3/15/55)

55.03-3 Front Yard - Adjoining Projecting Building

Where a lot adjoins only one (1) lot having a main building (within twenty-five (25) feet of its side lot lines), which projects beyond the established front yard line and has been so maintained since this Ordinance became effective, the front yard requirement on such lot may be the average of the front yards of said existing buildings. (Ord 38, 3/15/55)

55.03-4 Front Yard - Sloping Lot

Where the elevation of the ground at a point fifty (50) feet from the front line of a lot, and midway between the side lines, differs ten (10) feet or more from the curb level, or where the slope (measured in the general direction of the side lot lines) is twenty (20%) percent or more on at least one-quarter (1/4) of the depth of the lot, the front yard need not exceed fifty (50%) percent of that required in the district. (Ord 38, 3/15/55)

55.03-5 Front Yard and Side Yard Waived - Dwelling Over Store

The front and side yards shall be waived for dwelling, hotels and boarding or lodging houses, erected above the ground floor of a building when said ground floor is designed exclusively for commercial or industrial purposes. (Ord 38, 3/15/55)

55.03-6 Front and Side Yards Varied - Unit Development

Where an entire frontage on both sides of a street or streets in an "R1" District is designed and developed as a unit, the following provisions shall apply:

a) The front yard requirements may be varied by not more than five (5) feet in either direction, i.e., from twenty (20) feet to thirty (30) feet in the case of a required front yard of twenty-five (25) feet, provided the average front yard for the entire frontage is not less than the minimum front yard required in the district; and

b) The side yard requirements may also be varied, provided that the total combined width of the two (2) side yards on a lot is not less than the total side yards required for lots in the district and that the minimum distance between the sides of the buildings shall not be less than the total combined width of the side yards required in the district. (Ord 38, 3/15/55)

55.03-7 Side Yard Waived - Semi-Detached Dwellings, etc.

For the purpose of side yard regulations, the following dwellings with common party walls shall be considered as one (1) building occupying one (1) lot, semi-detached two (2) and four (4) family dwellings, row dwellings, group dwellings and court apartments. (Ord 38, 3/15/55)

55.03-8 Rear Yard - Includes One-Half Alley

In computing the depth of a rear yard where such yard opens onto an alley, one-half (1/2) the width of such alley may be assumed to be a portion of the required rear yard. (Ord 38, 3/15/55)

55.03-9 Rear Yard - Includes Loading Space

A required loading space may occupy a required rear yard, or any part thereof. (Ord 38, 3/15/55)

55.03-10 Additional Dwelling - Large Lot

Where a lot has an area equivalent to two (2) or more times that required by this Ordinance, but without sufficient required frontage for two (2) or more lots, a dwelling shall be permitted on both the front and rear portions of said lot, provided:

a) That all height and area requirements, except lot width, are complied with;

b) That a strip of land thirty (30) feet wide, measured at right angles from the rear lot line, is reserved for future access in addition to the required rear yard; and

c) That a strip of land at least fifteen (15) feet wide, measured at right angles to either side lot line and extending from the street line to the rear portion of the lot, is reserved as a means of access thereto.

55.03-11 Lot Area - Includes One-Half Alley

In computing the lot area of a lot which rear upon an alley, one-half (1/2) the width of such alley may be assumed to be a portion of the lot. (Ord 38, 3/15/55)

55.03-12 Through Lot - May Be Two Lots

Where a through lot has a depth of one hundred fifty (150) feet or more, said lot may be assumed to be two (2) lots with the rear lines of each approximately equidistant from the front lot lines, provided all area requirements are complied with. An accessory building shall not project beyond the front yard line of an existing main building along the frontage except that such accessory building need not be located more than twenty-five (25) feet from the street line. (Ord 38, 3/15/55)

55.04 Projections Allowed Into Yards

55.04-1 A porte-cochere may be permitted over a driveway in a side yard provided such structure is not more than fifteen (15) feet in height, twenty-four (24) feet in length, not closer than three (3) feet from the side lot line, and is entirely open on at least three (3) sides, except for the necessary supporting columns. (Ord 38, 3/15/55 ; Ord 38.667, 1/21/92)

55.04-2 Cornices, eaves, belt courses, sills, canopies, foundationless bay windows, garden, greenhouse or plant type windows or other similar architectural features (not including bay windows) may extend or project into a required front, side or rear yard not more than thirty (30) inches.

Chimneys may also project into a required front, side or rear yard not more than thirty (30) inches.

In no case shall any of the above projections be closer than three (3) feet to any side lot line. (Ord 38, 3/15/55; Ord 38,.667, 1/21/92)

55.04-3 Open, unenclosed fire escapes may extend or project into any front, side or rear yard not more than four (4) feet. (Ord 38, 3/15/55)

- 55.04-4 Open, unenclosed stairways, or balconies, not covered by a roof or canopy, may extend or project into a required rear yard not more than four (4) feet, and such balconies may extend into a required front yard not more than thirty (30) inches. (Ord 38, 3/15/55)
- 55.04-5 Open, unenclosed porches, platforms or landing places, not covered by a roof or canopy, or in the case of patio covers not exceeding thirty (30%) percent of the area of the required rear yard, which do not extend above the level of the first floor of the building, may extend or project into any rear or side yard, but in no event shall the projection come closer than three (3) feet to any adjoining property line. (Ord 38.342, 7/2/74)
- 55.04-6 Open, ornamental fences, hedges, landscape architectural features or guard railings for safety protection around depressed ramps, may be located in any front, side or rear yard if maintained at a height of not more than three and one-half (3-1/2) feet above the average ground level adjacent thereto. Provided, further, that an openwork type railing not more than three and one-half (3-1/2) feet in height may be installed or constructed on any balcony, stairway, porch, platform or landing place mentioned above in subparagraphs 55.04-4 and 55.04-5. (Ord 38, 3/15/55)
- 55.04-7 A fence, lattice-work screen or wall, not more than six (6) feet in height, or a hedge or thick growth of shrubs or trees, maintained so as not to exceed six (6) feet in height, may be located in any required side or rear yard, in the "R" Districts. Provided, further, that this provision shall not be so interpreted as to prohibit the erection of an open mesh type fence enclosing an elementary or secondary school site. (Ord 38.90, 9/1/66)
- 55.04-8 Landscape features, such as trees, shrubs, flowers or plants, shall be permitted in any required front, side or rear yard provided they do not produce a hedge effect contrary to the provisions of subparagraphs 55.04-6 as heretofore stated. (Ord 38. 3/15/55)
- 55.04-9 Nameplates, bulletin boards or signs pertaining to the prospective sale, lease or rental of the premises on which they are located, as permitted in this Chapter, shall be allowed in any required front, side or rear yard. (Ord 38. 3/15/55)
- 55.04-10 The above structures or features, however, shall not be located and maintained so as to preclude complete access at all times about a main building. Provided, that gates or other suitable openings at least two and one-half (2-1/2) feet in width shall be deemed adequate for such access. (Ord 38, 3/15/55)

55.04-11 Building additions into the required rear yard shall be allowed for all legal, conforming single-family and two-family dwellings in all Valley Floor Residential districts, when such dwelling has been constructed in accordance with law and a minimum period of one (1) year has elapsed since the final inspection as provided for in Title II of the Milpitas Municipal Code.

(a) Such building addition may be allowed into the required rear yard so that the remaining rear yard set back (measured perpendicular to the rear lot line at any point) is not less than the exterior height of the rear wall of said building addition and shall not encroach into a public utility easement.

(b) The exterior height of the rear wall at any point shall be measured vertically from the ground to top of the wall.

(c) Said building addition shall not cover an area exceeding thirty percent (30%) of the required rear yard area specified by the regulations or PUD for the District in which this single-family or two-family dwelling is located.

(d) Applications for building permit pursuant to this section shall provide the Community Development Department with sufficient information to determine the remaining rear yard set back and coverage of the required rear yard area as specified in (a) through (c) above. Building additions proposed for all legal, conforming single-family and two-family dwellings in the Valley Floor Residential districts require review and approval by the Planning Division or Planning Commission Subcommittee, pursuant to Section 42.10 of this Chapter.

(e) This section is intended to apply to bona fide building additions not contemplated at the time of original construction, where the owner finds for personal or economic reasons (in a community of growing families and under economic conditions where the purchases of larger homes imposes a heavy financial burden) the need to expand his existing dwelling and would not otherwise be allowed to do so within the required set backs of the District or Planned Unit Development. The waiting period of one (1) year from final inspection is intended to insure that the addition is erected in good faith and in accordance with the intent of this section. (Ord. 38.716, 9/15/98; Ord. 38.699, 5/16/95; Ord. 38.667 (part), 1/21/92; Ord. 38.373, 5/4/76; Ord. 38.342 7/2/74; Ord. 38.90 9/1/66; Ord. 38 (part) 3/15/55)

UPDATE LOG

(Ord. 38.716, 9/15/98 Sec. 55.04-11 Amended)

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Section 56 Non-conforming Buildings and Uses

Section 56 Contents

- 56.01 Maintenance Permitted
- 56.02 Repairing - Alterations
- 56.03 Additions - Enlargements - Moving
- 56.04 Restoration of Damaged Buildings
- 56.05 One Year Vacancy
- 56.06 Non-Conforming Use of Buildings
- 56.07 Expansion Prohibited - Discontinuance
- 56.08 Non-Conforming Use of Land

3/16/94

56.01 Maintenance Permitted

A non-conforming building or structure may be maintained, except as otherwise provided in this section. (Ord 38, 3/15/55)

56.02 Repairing - Alterations

Repairs and alterations may be made to a non-conforming building or structure, provided that no structural alterations shall be made except those required by law or ordinance. (Ord 38, 3/15/55)

56.03 Additions - Enlargements - Moving

56.03-1 A non-conforming building or structure shall not be added to or enlarged in any manner unless such building or structure, including such additions and enlargements, is made to conform to all the regulations of the district in which it is located. (Ord 38, 3/15/55)

56.03- 2 A building or structure which does not comply with the height or area regulations shall not be added to or enlarged in any manner unless such addition or enlargement conforms to all the regulations of the district in which it is located. (Ord 38, 3/15/55)

56.03- 3 A building or structure lacking sufficient automobile parking space in connection therewith may be altered or enlarged provided the required additional automobile parking space is supplied. (Ord 38, 3/15/55)

4 No non-conforming building or structure shall be moved in whole or in part to any other location on the lot unless every portion of such building or structure is made to conform to all regulations of the district in which it is located. (Ord 38, 3/15/55)

56.04 Restoration of Damaged Buildings

A non-conforming building or structure which is damaged or partially destroyed by fire, flood, wind, earthquake, or other calamity or act of god or the public enemy, to the extent of not more than seventy-five (75%) percent of its true value at that time, may be restored and the occupancy or use of such building, structure or part thereof, which existed at the time of such partial destruction, may be continued or resumed, provided the total cost of such restoration does not exceed seventy-five (75%) percent of the true value of the building or structure at the time of such damage and that such restoration is started within a period of one (1) year and is diligently prosecuted to completion.

In the event such damage or destruction exceeds seventy-five (75%) percent of the true value of such non-conforming building or structure, no repairs or reconstruction shall be made unless every portion of such building or structure is made to conform to all regulations for new buildings in the district in which it is located.

Provided, however, that any multi-story single family residence, which is subject to the provisions of the hillside section of this ordinance (section 45), may be rebuilt to its approved height and setbacks and is not subject to the single story height restrictions or other restrictions in the zoning ordinance currently in effect, but shall conform to those regulations in effect at the time the structure was built.

(Ord. 38.681, 8/3/93)

56.05 One Year Vacancy

A non-conforming building, structure or portion thereof, which is or hereafter becomes vacant and remains unoccupied for a continuous period of one (1) year shall not thereafter be occupied except by the use which conforms to the use regulation of the district in which it is located. (Ord 38, 3/15/55)

56.06 Non-Conforming Use of Buildings

Continuation and Change of Use: Except as otherwise provided in this section:

56.06-1 The non-conforming use of a building or structure, existing at the time this Ordinance became effective, may be continued; and

56.06-2 the use of a non-conforming building or structure may be changed to a use of the same or more restrictive classification, but where the use of a non-conforming building or structure is hereafter changed to a use of a more restricted classification, it shall not thereafter be changed to a use of a less restricted classification; and

56.06-3 a vacant, non-conforming building may be occupied by a use for which the building was designed or intended, if so occupied within a period of one (1) year after the effective date of this Ordinance, or within a period of one (1) year after the building becomes vacant.

(Ord 38, 3/15/55)

56.07 Expansion Prohibited - Discontinuance

A non-conforming use of a conforming building or structure (i.e., commercial use in a dwelling, etc.) shall not be expanded or extended into any other portion of such conforming building or structure nor changed except to a conforming use. If such a non-conforming use, or portion thereof, is discontinued or changed to a conforming use, any future use of such building, structure, or portion thereof, shall be in conformity with the regulations of the district in which such building or structure is located. (Ord 38, 3/15/55)

56.08 Non-Conforming Use of Land

56.08-1 Continuation of Use:

The non-conforming use of land (where no main building is involved), existing at the time this Ordinance became effective, may be continued for a period of not more than five (5) years therefrom, provided:

- a) That no such non-conforming use of land shall, in any way, be expanded or extended either on the same or adjoining property.
- b) That, if such non-conforming use of land, or any portion thereof, is discontinued or changed, any future use of land shall be in conformity with the provisions of this Chapter.
- c) That any sign, billboard, commercial advertising structure or statuary, which is lawfully existing and maintained prior to January 26, 1954, may be continued, although such use does not conform with the provisions hereof; provided, however, that no structural alterations are made thereto and provided, further, that all such non-conforming signs, billboards, commercial advertising structures and statuary, and their supporting members, shall be completely removed from the premises not later than five (5) years from the effective date of this Ordinance.

(Ord 38. 3/15/55)

56.08-2 Non-conforming Due to Reclassification:

The foregoing provisions of this section shall also apply to buildings, structures, land, or uses which hereafter become non-conforming due to any reclassification of districts under this Chapter or any subsequent change in the regulations of this Chapter; provided, however, that where a period of years is specified in this section for the removal of non- conforming buildings, structures, or uses, said period shall be computed from the date of such reclassification or change. (Ord 38, 3/15/55)

(Ord. 38.681, 8/3/93 - Amending Sec. 56.04 which was first adopted by Ord. 38, 3/15/55)

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Section 57 Conditional Use Permit

Section 57 Contents

- 57.01 Considerations, Finding and Determination
- 57.02 Additional uses permitted
- 57.03 Conditional Use Procedure
- 57.04 Consideration of Use Permit Pending Zoning Amendment

57.01 Considerations, Finding and Determination

In reviewing Conditional Use Permit applications, the Planning Commission shall be empowered to approve, conditionally approve or disapprove said Conditional Use Permit application based on normal Planning considerations including, but not limited to, suitability of site; conformance to the Master Plan; harmony with the various elements or objectives of the Master Plan; the most appropriate use of the land throughout the City; stabilization and conservation of the value of property; traffic flow; circulation; safety for vehicle and pedestrian traffic; imposition of noises, odors and health and safety hazards upon nearby residential area; provisions of adequate light, air and reasonable access; securing safety from fire and other dangers; prevent overcrowding of land; facilitating adequate provision for transportation and in general, to promote the public health, safety, peace, morals, comfort and welfare; prevention of neighborhood deterioration and blight; the objectives of zoning and planning in the community and the effect upon the City's general welfare of this proposed use in relation to surrounding uses and the community. Such Conditional Uses include but are not limited to the following: 57.01

- 1.1 Animal hospital.

- 1.2 Auto wrecking or salvage yards
- 1.3 Automobile service stations and auto car washes.
- 1.4 Churches.
- 1.5 Clinics.
- 1.6 Community centers and private clubs or lodges.
- 1.6.1 Condominiums and Condominium conversions. (Ord 38.485, 7/3/79)
- 1.7 Golf courses.
- 1.8 Mobile home parks.
- 1.9 Mortuaries and funeral homes.
- 1.10 Parks and playgrounds.
- 1.11 Public camps.
- 1.12 Schools; elementary, high and junior college. (Ord 38.180, 6/17/79)
- 1.13 Vehicle oriented window service facility. (Ord 38.395, 9/20/77)
- 1.14 Moved or relocated buildings prior to issuance of a moving permit from the Chief Building Inspector. (Ord 38.491, 8/21/79)

57.01 (a) Definition of Conditional Use Permit

Conditional Use Permit: A permit issued by the City to allow a particular land use which would not otherwise be permitted as a matter of right in a zoning district. A Conditional Use Permit may only be issued for those uses listed as "Conditionally Permitted" in each Zoning District (and the uses listed as conditionally permitted within this Chapter). Conditional Use Permits apply to the land or tenant space and not the permit holder. (Ord 38.706, 7/16/96)

57.01.2 Deleted (Ord 38.662, 1/8/91)

57.01.3 Deleted (Ord 38.662, 1/8/91)

57.02 Additional uses permitted

The Commission may, after a public hearing, permit the following uses in districts from which they are prohibited by this Chapter where such uses are deemed essential or desirable to the public convenience or welfare and are in harmony with the various elements or objectives of the Comprehensive Master Plan.

However, any of the following uses which are marked with an asterisk (*) shall not be allowed in the designated Hillside Area. (Ord 38.633,)

*1 Airport or aircraft landing field. (Ord 38.633,)

1.1 Helicopter pads for medical evacuation purposes. (Ord 38.633,

) *2 Cemetery (Ord 38.633,)

*3 Columbarium, crematory or mausoleum. (Ord 38. 633,)

*4 Development of natural resources (excluding the drilling for or producing of oil, gas or other hydrocarbon substances) together with the necessary buildings, apparatus, or appurtenances incident thereto. (Ord 38.633,)

5 Educational Institution. (Refer to definition section)

6 Government Enterprise (Federal, State and Local).

7 Hospital or Sanitarium.

8 Library or Museum, public.

9 Nursery or Greenhouse.

10 Park, Playground, or Recreational or Community Center.

11 Philanthropic Institution.

*11.1 Correctional Facility. (38.633,)

12 Private Club. (Ord 38.633,)

*12.1 Fraternity or Sorority House. (Ord 38.633,)

13 Public Utility and Public Service Use or Structure.

14 Radio or Television transmitter.

15 Reverse vending machines or mobile recycling units except

where the lot is being used for residential purposes. (Ord. 38.629, 10/27/87)

16 Without limitation to the generality of the provisions of Section 57 et. seq., conditional use may also be granted to accomplish any of the purposes set forth in Subsection 57.02. (Ord 38.92, 12/6/66)

17 Permit in the "R" Districts, public parking areas or storage garages adjacent to any existing or proposed use in the multiple dwelling, commercial or industrial districts.

18 Permit the modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements; or permit the waiver of the requirement that automobile parking space be provided on the same lot with a dwelling, if other suitable and convenient parking space is available within or without a building.

19 Permit the addition or enlargement of a non-conforming building or structure, provided such addition or enlargement complies with all height and area regulations of the district in which it is located and that the total aggregate floor area included in all such separate addition or enlargement does not exceed fifty (50%) percent of the floor area contained in said building or structure. Provided, further, that no such addition or enlargement shall be permitted which tends to prolong the life of the original building or structure.

20 Permit in districts limiting the height to two and one half (2 1/2) stories, thirty-five (35) feet, or three (3) stories, forty-five (45) feet, schools, hospitals, sanitariums, institutions, churches and other similar uses allowed under the use regulations of this Chapter, to be erected to a height not exceeding six (6) stories or seventy-five (75) feet, provided, that the front and side yard requirements for such buildings in the "R3" District are complied with.

21 Permit the use of a non-conforming building, or portion thereof, which has been vacant or unoccupied for a continuous period on one (1) year, but not more than three (3) years, for a use other than that permitted in the district in which such non-conforming building is located.

22 Permit a less restrictive use in a more restrictive district as follows: any "C" District use in any other "C" District, and "M1" use in the "C2" District; any "M2" use in an "M1" District; provided such use, due to its limited nature, modern devices, or building design, will be no more objectionable than the uses permitted in such district.

23 Deleted. (Ord 38.92, 12/6/66)

24 Permit temporary buildings and uses for periods not to exceed two (2) years in undeveloped sections of the City, and for periods not to exceed six (6) months in developed sections.

25 Permit the reduction in the lot width requirements.

26 Permit agricultural uses including ranch, farm dwellings and quarters, accommodations or areas for transient labor, such as labor cabins or camps. (Ord 38.676, 11/17/92)

57.03 Conditional Use Procedure

(Ord 38.92, 12/6/66)

1 Written application for the approval of uses referred to in Section 57 shall be filed in the office of the Planning Director upon forms prescribed for that purpose.

2 A fee shall be paid upon the filing of each application for a Use permit in accord with a schedule adopted by Council Resolution. (Ord 38.92, 12/6/66)

3 The Planning Commission shall hold a public hearing on said application upon such notice as is required in Section 64.01 and 64.02-2 of this Chapter. (Ord 38.92, 12/6/66)

4 After the conclusion of the hearing, the Planning Commission may approve the application, approve it subject to such conditions as the Planning Commission may impose, or disapprove the application. (Ord 38.92, 12/6/66)

(a) The Planning Commission may impose such conditions as it deems necessary to protect the best interests of the surrounding property of the neighborhood, and as it deems in conformity with the requirements of the General Plan. (Ord 38.92, 12/6/66)

5 The Planning Commission or City Council may grant approval of a Use Permit application in accordance with this Chapter; if all of the following findings are made, based on the evidence in the record: (Ord 38.706, 7/16/96)

a) The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health,

safety, and general welfare;

b) The proposed use is consistent with the Milpitas General Plan; and

c) The proposed use is consistent with the Milpitas Zoning Ordinance.

57.04 Consideration of Use Permit Pending Zoning Amendment

Upon the close of the public hearing before the Planning Commission on the question of an amendment to this Chapter to change property from one zone to another, and upon favorable report thereon by the Commission, the Commission may consider such matters and regulations as are set forth in Section 57. The Commission may conditionally impose such requirements and regulations upon the subject property and use as the Commission is authorized to impose by Section 57 and may conditionally approve Use Permits; said requirements and regulations shall be imposed and said approval shall be granted upon the express condition that said property shall be rezoned in accordance with the specific recommendation of the Planning Commission relating to zoning and shall not take effect unless and until said property is rezoned in accordance with specific recommendation of the Planning Commission and until the Ordinance amending this Chapter in accordance with the specific recommendation of the Planning Commission shall take effect. (Ord 38.205, 10/20/70)

UPDATE LOG:

(Ord 38.706, 7/16/96 Added Sec 57.01(a) and 57.03-5)

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Section 58 Variances

Section 58 Contents

58.01 Variances - Authority of Commission

58.02 Procedure

58.01 Variances - Authority of Commission

58.01-1 The Planning Commission is empowered to grant Variances from the substantive provisions of this Chapter when the strict application of the substantive provisions of this Chapter deprives the property for which the Variance is sought of privileges enjoyed by other property in the vicinity and under identical zoning classification

because of special circumstances applicable to the property (including, but not limited to size, shape, topography, location or surrounding. (Ord 38.92, 12/6/66)

58.01-1 (a) Definition of Variance

Variance: A permit issued by the City that sanctions deviations from the adopted Zoning Ordinance regulations related to physical standards of development, such as lot size, building setback, and height limits. A Variance may not be granted to allow a use or density not otherwise allowed within the zoning district. (Ord 38.706, 7/16/96)

58.01-2 The Planning Commission shall be empowered to impose such conditions upon the grant of a Variance as it deems desirable and shall impose such conditions as will assure that the Variance does not constitute a grant of special privilege inconsistent with limitations upon other properties in the vicinity and zone in which said property is located. (Ord 38.92, 12/6/66)

a) The City of Milpitas finds that the granting of a Variance to yard regulations for a lot of record, existing in accordance with law, as provided for in Subsection 54.06-10, does not constitute a grant of special privileges inconsistent with limitations upon other properties in the vicinity and zone in which said property is located. (Ord 38.367, 12/16/75)

58.01-3 The following standards shall guide the Planning Commission in the granting or denial of a Variance and in the imposition of conditions upon the grant of a Variance: (Ord 38.92, 12/6/66)

a) A Variance is intended to alleviate a hardship imposed by the zoning law and arising from the particular size, shape, topography, location, surrounding, or other circumstance.

b) The basic test in each case is one of hardship; Variances should not be granted, except in case of hardship.

c) Denial of the Variance - under the conditions or circumstances presented - would deprive the particular parcel involved of benefits enjoyed by other parcels in the same District.

d) A Variance should not be used to correct a condition or circumstance generally applicable to the

entire District. (Ord 38.367, 12/16/75)

e) The granting of the Variance must not injure other parcels of property in the same District nor must it be materially detrimental to the public welfare.

58.02 Procedure

58.02-1 Written application for the approval of Variances shall be filed in the office of the Planning Director upon forms prescribed for that purpose.

2 A fee shall be paid upon the filing of each application for Variance in accord with a schedule adopted by Council Resolution.

3 The Planning Commission shall hold a public hearing on each application for a Variance upon such notice as is required in Subsection 64.01 and 64.02-2 of this Chapter.

4 The Planning Commission shall make its decision within forty (40) days from the date of filing of the application. The Planning Director shall transmit a copy thereof to the applicant within ten (10) days of the date of decision.

UPDATE LOG:

(Ord 38.706, 7/16/96 Added Sec 58.01-1 (a))

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Section 59 Certificate of Occupancy

Section 59 Contents

- 59.01 Certificate of Occupancy for a Building
- 59.02 Certificate of Occupancy for Land
- 59.03 Certificate of Occupancy - contents filing-fee
- 59.04 Site plans
- 59.05

No vacant land shall be occupied or used until a Certificate of Occupancy shall have been issued by the Building Official. (Ord 38, 3/15/55)

59.01 Certificate of Occupancy for a Building

Certificate of Occupancy for a new building or the enlargement or alteration of an

existing building shall be applied for coincident with the application for a building permit; said certificate shall be issued after the request for same shall have been made in writing to the Building Official after the erection or alteration of such building or part thereof shall have been completed in conformity with the provisions of these regulations.

Pending the issuance of a regular certificate, a Temporary Certificate of Occupancy may be issued by the Building Official for a period not exceeding six (6) months, during the completion of alterations or during partial occupancy of a building pending its completion. Such temporary certificate shall not be constructed as in any way altering the respective rights, duties, or obligations of the owners or of the City relating to the use or occupancy of the premises or any other matter covered by this Chapter, and such temporary certificate shall not be issued except under such restrictions and provisions as will adequately insure the safety of the occupants. (Ord 38, 3/15/55)

59.02 Certificate of Occupancy for Land

Certificate of Occupancy for the use of vacant land or the change in the character of the use of land as herein provided, shall be applied for before any such land shall be occupied or used for any purpose except that the tilling the soil and growing herein of farm garden or orchard products, and a Certificate of Occupancy shall be issued after the application has been made, provided such use is in conformity with the provisions of these regulations. (Ord 38, 3/15/55)

59.03 Certificate of Occupancy - contents filing-fee

Certificate of Occupancy shall state that the building or proposed use of a building or land complies with all the provisions and regulations of this Ordinance. A record of all certificates shall be kept on file in the office of the Building Official and copies shall be furnished, on request, to any person having a proprietary or tenancy interest in the building or the land affected. A fee of one dollar (\$1.00) shall be charged for each extra copy of a Certificate of Occupancy, issued after the original has been furnished the owner or his agent. (Ord 38, 3/15/55)

59.03-1 Provided, however, no fee shall be required of the Milpitas Elementary School District, the Milpitas Fire Protection District, the Milpitas County Water District, and County Sanitation District No. 8 of Santa Clara County. (Ord 38, 3/15/55)

59.04 Site plans

All applications for a Certificate of Occupancy shall be made on a printed form to be furnished by the Building Official and shall contain accurate information and dimensions as to the size and location of the lot; the size and location of the building or structure on the lot; the dimensions of all yards and open spaces; and such other information as may be necessary to provide for the enforcement of these regulations. Where complete and accurate information is not readily available from existing records, the Building Official may require the applicant to furnish a survey of the lot prepared by a licensed surveyor. A careful record of the original copy of such applications and site plans shall be kept in the office of the Building Official and the duplicate copy shall be kept at any building under

construction at all times during construction thereof. (Ord 38, 3/15/55 - 7/19/56)

59.05

The issuance or granting of a Certificate of Occupancy shall not be construed to be a permit for or an approval of, any violation of this or any ordinance of the City of Milpitas. No Certificate of Occupancy purporting to violate or cancel the provisions of this or any ordinance of the City of Milpitas shall be valid except insofar as the use which it authorized is lawful. (Ord 38, 3/15/55)

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Section 60 Boundaries of Districts

Section 60 Contents

- 60.01 Street and Alleys
- 60.02 Lot Lines
- 60.03 Scale of Map
- 60.04 Symbol for District
- 60.05 Street or Right-of-way -- Allocation or Division
- 60.06 Vacated Street or Alley

Where uncertainty exists with respect to the boundaries of the various districts as shown on the district map accompanying and made a part of this Chapter, the following rules shall apply: (Ord 38, 3/15/55)

60.01 Street and Alleys

The district boundaries are either streets or alleys, unless otherwise shown, and where the indicated boundaries on said district map are approximately street or alley lines, said streets or alleys shall be construed to be the boundaries of such districts. (Ord 38, 3/15/55)

60.02 Lot Lines

Where the district boundaries are not shown to be streets or alleys, and where the property has been or may hereafter be divided into blocks and lots, the district boundaries shall be construed to be lot lines; and where the indicated boundaries on the district map are approximately lot lines, said lot lines shall be construed to be the boundaries of each district, unless said boundaries are otherwise indicated on the map. (Ord 38, 3/35/55)

60.03 Scale of Map

Where the property is indicated on the district map as acreage and not subdivided into lots and blocks or where the district boundary lines on the district map shall be determined by the scale contained on such map, and where uncertainty exists, the district boundary line shall be determined by the Commission by written decision. In the event property which is shown as acreage on the district map has been or is subsequently subdivided into lots and blocks by a duly recorded

subdivision map and the lot and block arrangement does not conform to that anticipated when the district boundaries were established, or property is resubdivided by a duly recorded subdivision map in to district map, the Commission, after notice to the owners of property affected thereby and hearing, as required in Section 62 inclusive, may interpret the district map and make minor readjustments in the district boundaries in such a way as to carry out the intent and purposes of these regulations and conform to the street and lot layout on the ground. Such interpretations or adjustments shall be by written decision. (Ord 38, 3/15/55)

60.04 Symbol for District

Where one symbol is used on the district map to indicate the district classification of an area divided by an alley or alleys, said symbol shall establish the classification of the whole of such area. (Ord 38, 3/15/55)

60.05 Street or Right-of-way -- Allocation or Division

A street, alley, railroad right-of-way, watercourse, channel or body of water, included on the district map shall, unless otherwise indicated, be included within the district of adjoining property on either side thereof; and where such street, alley, right-of-way, watercourse, channel or body of water serves as a boundary between two (2) or more different districts, a line mid-way in such street, alley, right-of-way, watercourse, channel or body of water, and extending in the general direction of the long dimension thereof shall be considered the boundary between districts. (Ord 38, 3/15/55)

60.06 Vacated Street or Alley

In the event a dedicated street or alley shown on the district map is vacated by ordinance, the property formerly in said street or alley shall be included within the district of the adjoining property on either side of the said vacated street or alley. In the event said street or alley was a district boundary between two (2) or more different districts, the new district boundary shall be the former centerline of said vacated street or alley. (Ord 38, 3/15/55)

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Section 61 Interpretation

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- 61.01 Commission's Powers
- 61.02 Conflict with other Ordinances
- 61.03 Basic Rule of Construction and Administration

61.01 Commission's Powers

Subject to the provisions of this Chapter (including, but not limited to, the right of

any aggrieved party to appeal), the Planning Commission shall be empowered to interpret, construe, and administer the provisions of this Chapter. (Ord 38.92, 12/6/66)

61.02 Conflict with other Ordinances

Where this Chapter imposes a greater restriction upon the use of land, buildings or structures, or upon the height of buildings or structures, or requires larger open spaces than are imposed or required by other ordinances, rules, or regulations of the City of Milpitas or by easements, covenants or agreements, the provisions of this Chapter shall control. (Ord 38.92, 12/6/66)

61.03 Basic Rule of Construction and Administration

It is the intent of the City Council that this Chapter shall be construed and administered so as to provide the City with a maximum degree of control over zoning matters (see Government Code 65800). (Ord 38.92, 12/6/66)

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Section 62 Amendments

Section 62 Contents

- 62.01 Substantive and Procedural Amendments
- 62.02 Procedure for Change - Who May Initiate
- 62.03 Procedure for Change -- Initiated by Commission or Council
- 62.04 Procedure for Change -- Initiated by Property Owner
- 62.05 Expiration of Application and Time Extension

62.01 Substantive and Procedural Amendments

62.01-1 In Accordance with the provisions of Section 65853 of the Government Code of the State of California, any amendment to this Chapter which changes any property from one zone to another or imposes any regulation or removes or modifies any regulation relating to land, buildings, structures, signs, billboards, lots, yards, courts, and open spaces, off- street parking and loading, building setback lines or civic districts (as listed in Section 65850 of the Government Code) or which prezones unincorporated land, shall be adopted in accordance with the provisions of Section 65854 through 65857 and the provisions of Section 65859 of the Government Code, and the provisions of Subsection 62.02, 62.03, 62.04 and 62.05 of this Chapter. (Ord 38.92, 12/6/66)

2 Any other amendment to this Chapter may be adopted by the City Council as other ordinances are adopted. (Ord 38.92, 12/6/66)

3 Nothing contained in this Chapter, however, shall be construed to be a limitation on the power of the City Council to adopt an interim zoning ordinance as an urgency measure in accordance with the procedures and relating to the subject matter set forth in Section 65858 of the Government Code. (Ord 38. 92, 12/6/66)

62.02 Procedure for Change - Who May Initiate

An amendment to this Chapter under Section 62.01-1 may be initiated in any of the following ways: (Ord 38.92, 12/6/66)

62.02-1 By the Planning Commission or by the City Council. (Ord 38.92, 12/6/66)

2 By a property owner who seeks to have his parcel rezoned in accordance with the procedure set forth in subsection 62.04. (Ord 38.92, 12/6/66)

3 By the owners of fifty (50%) percent or more of the area of all the property sought to be rezoned in accordance with the procedure set forth in subsection 62.04. (Ord 38.92, 12/6/66)

62.03 Procedure for Change -- Initiated by Commission or Council

62.03-1 Any amendment proposed by the City Council under Section 62.01-1 shall be first referred to the Planning Commission. (Ord 38.92, 12/6/66)

2 The Planning Commission shall hold a public hearing on any said proposed amendment (whether initiated by Council or Commission) after notice given in accordance with the provisions of Subsection 64.01 and 64.02 of this Chapter. (Ord 38.92, 12/6/66)

3 At the conclusion of the hearing, the Planning Commission shall make a written recommendation to the City Council, including the reasons for its recommendation. A recommendation shall be made within forty (40) days after the reference from the City Council on any said proposed amendment, unless the City Council consents to an extension of time. Failure of the Planning Commission to report to the City Council within forty (40) days after the reference (unless the City Council shall have consented to an extension of time) shall be deemed to be an approval of the proposed amendment. (Ord 38.480, 6/5/79)

4 On receipt of the Planning Commission recommendation, the City Council shall hold a public hearing thereon after notice (given in accordance with the provisions of Section 64 of this Chapter). (Ord 38.92, 12/6/66)

a) Provided, however, if the matter under consideration is an amendment to change property from one zone to another, and the Planning Commission has recommended against said amendment, the City Council shall not be required to hold a public hearing or take any further action unless an interested party shall request a hearing in writing filed (with the City Clerk) within ten (10) days after the Planning Commission files its recommendation with the City Council. Such a written request for a hearing shall be in lieu of appeal rights provided for in Subsection 64.02 of this Chapter. (Ord 38.92, 12/6/66)

5 After the conclusion of the hearing, the City Council may approve, modify or disapprove the recommendation of the Planning Commission. (Ord 38.92, 12/6/66)

a) Provided, however, that any modification of the proposed amendment by the City Council shall be referred back to the Planning Commission for a report and recommendation; the Planning Commission shall not hold a public hearing thereon unless requested to do so by the City Council. Failure of the Planning Commission to report to the Council within forty (40) days after the reference shall be deemed to be an approval of the proposed modification. (Ord 38.92, 12/6/66)

62.04 Procedure for Change -- Initiated by Property Owner

62.04-1 Property owner or owners (as described in Subsection 62.02-2) may request an amendment to the provisions of this Chapter under Subsection 62.01-1 by: (Ord 38.92, 12/6/66)

a) Filing an application with the Planning Department upon such forms and accompanied by such information and data as may be required by the Planning Department and Planning Commission. (Ord 38.92, 12/6/66)

b) Verifying said application under oath of at least one (1) of the owners of the property, attesting to the truth of all statements in the application, and information and data furnished. (Ord 38.92, 12/6/66)

c) Paying a fee to the City at the time of said application in accord with a schedule adopted by

2 Upon the filing of said application, as herein required, and the payment of the filing fee, said application shall be processed in accordance with the provision of Subsection 62.03 of this Chapter. (Ord 38.92, 12/6/66)

62.05 Expiration of Application and Time Extension

If an ordinance proposing to change the zoning of certain land (by amendment to the Zoning Ordinance of the City of Milpitas) is not adopted (by a second reading) within twelve(12) months of the date of its introduction (by first reading), then the application giving rise to said ordinance shall be deemed to have expired (without notice to the applicant) and the unadopted ordinance shall not then be capable of adoption by second reading. Provided, however: (Ord 38.559, 4/19/83)

62.05-1 Upon recommendation of the Planning Commission, the City Council may grant an extension of time for second reading and adoption not to exceed twelve (12) months subject to the following requirements: (Ord 38.559, 4/19/83)

- a) no more than one (1) such extension may be granted, and
- b) the extension must be granted by the Council within twelve(12) months of the date of introduction of the ordinance, and
- c) new conditions may be imposed upon the zone change. (Ord 38.559, 4/19/83)

2 Nothing herein contained shall be construed to prevent a subsequent application for a change of zone of the same land or the subsequent introduction of a new ordinance changing the zone of said land. (Ord 38.559, 4/19/83)

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Section 63 Enforcement and Penalty

Section 63 Contents

63.01 Enforcement

63.02 Penalty

- 63.03 Declaration of Public Nuisance
- 63.04 Order to Stop Work
- 63.05 Remedies Cumulative
- 63.06 Revocation, Suspension, Modification

63.01 Enforcement

All departments, officials and public employees of the City of Milpitas vested with the duty or authority to issue permits shall conform to the provisions of this Chapter and shall issue no permit or license for uses, buildings, or purposes in conflict with the provisions of this Chapter; and any permit or any business license issued in conflict with the provisions of this Chapter shall be null and void. (Ord 38.600, 3/4/86)

63.02 Penalty

It shall be unlawful for any person to violate any of the provisions of this Chapter. Any person convicted of violating any of the provisions of this Chapter shall, upon conviction, be punished by a fine not to exceed the sum of FIVE HUNDRED DOLLARS (\$500) or by imprisonment in the County Jail not to exceed six (6) months or by both such fine and imprisonment. Each day that a violation of this Chapter continues shall be considered a separate offense.

Any use of a premises or a building which deviated from or violates any of the provisions of this Chapter shall be termed an illegal occupancy and the person or persons responsible therefor, shall be subject to the penalties herein provided. (Ord 38, 3/15/55)

63.03 Declaration of Public Nuisance

The use of any land, building or other structure hereafter established or conducted or the present use of any land, building or other structure hereafter extended or enlarged or the erection, construction, moving, conversion, remodeling or alteration of any building or other structure contrary to the provisions of this Chapter shall be and the same is hereby declared to be a public nuisance, and the Attorney for the City of Milpitas shall, upon order of the City Council, immediately commence action or proceedings for the abatement or removal or injunction thereof in the manner provided by law. (Ord 38, 3/15/55)

63.04 Order to Stop Work

Whenever any work is being done contrary to the provisions of this Chapter, the Building Official any order the work stopped by notice in writing served on any person engaged in the doing of such work or in the causing of such work to be done, and any person shall forthwith stop such work until authorized in writing by the Building Official to proceed with such work. (Ord 38, 3/15/55)

63.05 Remedies Cumulative

The remedies provided for in Section 63.00 inclusive shall be cumulative and not exclusive. (Ord 38, 3/15/55)

63.06 Revocation, Suspension, Modification

63.06-1 The City Council shall have the power to revoke, suspend or modify any permit, variance or approval issued under the provisions of this Chapter (including, but not limited to conditional use permit, variances, or "S" Zone approval) for breach of any condition or requirement imposed upon the granting of said permit, variance or approval. (Ord 38.92, 12/6/66)

2 The revocation, suspension, or modification, of a land use permit shall only be made after written notice of violation is mailed to the holder of the permit. The permit holder shall be given an opportunity to explain why the permit should not be revoked, suspended or modified. The Planning Commission and City Council shall hold public hearings in accordance with Title XI, Chapter 10, Sections 64.01, 64.02 and 65 regarding said permit. After receiving the Planning Commission's recommendations on said permit, the City Council at its discretion may revoke, suspend or modify the previously issued permit upon making any of the following findings based on the evidence in the record: (Ord 38.706, 7/16/96)

1) There was a violation of a condition of the permit, and the violation was not abated, corrected or rectified within the time specified on the notice of violation;

2) There was a violation of law relating to the permit and the violation was not abated, corrected or rectified within the time specified on notice of violation;

3) The permit or approval is being exercised in a manner which creates a public nuisance; or

4) The permit or approval is being exercised in a manner which is contrary to the public health, safety and welfare.

3 Notice shall be given in accordance with the provisions of Section 64 of this Chapter. The hearing shall be held in accordance with the provisions of Section 65 of this Chapter. (Ord 38.92, 12/6/66, Ord 38.706, 7/16/96).

UPDATE LOG:

(Ord 38.706, 7/16/96 Amended Sec 63.06-2 & 3)

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Section 64 Notice and Appeal

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- 64.01 Time
- 64.02 Manner
- 64.03 Appeals
- 64.04 Expiration of Permit or Approvals

64.01 Time

Time of giving notice:

Whenever notice of hearing is required by this Chapter, it shall be given at least ten (10) calendar days before the hearing. (Ord 38.92, 12/6/66)

64.02 Manner

Manner of giving notice:

Whenever notice of hearing is required by this Chapter for any of the following matters:

64.02-1 For pre-zoning of unincorporated land; an amendment to the substantive provisions of this Chapter (including Changes of Zone); an application for variance or a conditional use permit or new "S" Zone and amendments of 10,000 square feet or more or for revocation, suspension or modification of the same, or an appeal from the action taken thereon, it shall be given: (Ord 38.706, 7/16/96)

- a) By publication in a newspaper of general circulation within the City ; (Ord 38.600, 3/4/86)
- b) By posting the notice in at least three (3) conspicuous places close to the property affected; and
- c) Public hearing notices shall be mailed to all property owners and renters within three hundred (300) feet of the subject parcel's property boundaries. The Community Development Director or Planning Commission Chair shall have the discretion to require a 1,000 feet notification requirement for public hearings, if the project is deemed to be potentially controversial. (Ord 38.706, 7/16/96)
- d) The owner of the subject real estate property and the applicant, respondent or appellant shall be given notice by mail in accordance with the provisions of Section I-20-2.02 of the Milpitas Municipal Code. (Ord

38.600, 3/4/86)

e) Deleted (Ord 38.706, 7/16/96)

f) Notice shall be given by mail in accordance with the provisions of Section I-20-2.02 to the Milpitas Unified School District and, in addition, to any other local agency expected to provide essential facilities and services to the project and whose ability to provide said facilities and services may be significantly affected.
(Ord 38.600, 3/4/86)

2 Contents of Notice of Public Hearing

All notices shall include the date, time and place of any public hearing, the identity of the hearing body and a general explanation of the matter to be considered and a general description, by text or diagram, of the location of the real property, if any, that is the subject of the hearing. (Ord 38.600, 3/4/86)

3 Deleted (Ord 38.513, 6/3/80)

4 For cases not otherwise provided for herein: (and, except where otherwise required by the law of the State of California), by publication or posting or mailing, in the discretion of the City Manager, and in accordance with the provisions of Section 2, Chapter 20, Title I of the Milpitas Municipal Code.

a) Nothing herein contained shall be construed to require the giving of notice or the holding of a hearing unless a public hearing is required by law.

64.03 Appeals

64.03-1 Except as otherwise provided in Section 62.03-4 (a) of this Chapter, any person aggrieved by any decision of any officer, board, commission or department of the City of Milpitas under the provisions of this Chapter may appeal said decision to the Code.

2 While appeals hereunder shall be heard at general or special meetings of the City Council, no notice thereof need be given (other than as required by said Section 5, Chapter 20, Title I of the Milpitas Municipal Code). Provided, however, that if the appeal is taken from action on an application for a variance, conditional use or other permit, notice of the hearing of the appeal shall also be given in accordance with the provisions of Subsection 64.01-1 and 64.02-2 of this Chapter.

3 Exception to Appeal Procedure

Provided, however, that the time for any appeal from action of the Planning Commission in granting, granting subject to condition or denying an "S" Zone pending a zoning amendment (pursuant to the provisions of Section XI-10-42.02) or in granting, granting subject to condition or denying a Use Permit pending a zoning amendment (pursuant to the provisions of Section XI-10-57.04) shall be extended so that said appeal may be taken at the time within ten (10) days from the date that said City Council shall give second reading to the Zoning Ordinance amendment. (Ord 38.205, 10/20/70)

64.04 Expiration of Permit or Approvals

Any Conditional Use, "S" Zone, Variance or other permit approval granted under the terms of this Ordinance shall expire (without notice to the grantee) eighteen (18) months after the date of approval, unless the approval is used or exercised before expiration. (Ord 38.542, 4/6/82)

64.04-1 Time Extension

An extension of time not exceeding eighteen (18) months may be granted by the Planning Commission and no more than one (1) extension shall be granted. An extension is valid only if approved before the pending expiration date. New conditions may be imposed on an extension of time for any permit. (Ord 38.5432, 4/6/82)

2 Use of Approvals

For the purposes of Section 64.04 an approval is "used" or "exercised" if the applicant:

- 1) obtains a building permit and completes a foundation, or
- 2) dedicates any land or easement as required from the zoning action, or
- 3) complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner. (Ord 38.542, 4/6/82)

3 Date of Approval

Unless there is an appeal the date of approval is the date on which the deciding body votes on the motion of approval. When there is an appeal, the date of approval is the date of the administrative vote on the motion finally determining the appeal. (Ord 38.542, 4/6/82)

4 Deleted. (Ord 38.542, 4/6/82)

UPDATE LOG:

(Ord 38.706, 7/16/96 Amended Sec 64.02-1 and 64.02-1(c))

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Section 65 Procedural Rules for the Conduct of Hearings

All hearings before the Planning Commission and City Council relating to zoning matters shall follow the procedures set forth in Section 3 entitled "Hearings" of Chapter 20, Title I (Standard Procedures) of the Milpitas Municipal Code. Said zoning hearings may be held in accordance with the standards established in Section I-20-3.01 entitled "Application of Chapters: Limitations". Nothing herein contained is intended to establish for zoning hearings any standard whatever greater than that required by Section 65801 of the Government Code of the State of California or by said Section 3.01 of Chapter 20, Title I of the Milpitas Municipal Code. (Ord 38.229, 7/5/72)